

Approved: March 5, 1997  
Date

## MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Mike Harris at 10:05 a.m. on February 20, 1997 in Room 514-S of the Capitol.

All members were present except:

Committee staff present: Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department  
Gordon Self, Revisor of Statutes  
Mary Blair, Committee Secretary

Conferees appearing before the committee: Bud Grant, KCCI  
Senator Huelskamp  
Don Fisher, JC Penney Co. Dodge City, Ks.  
Frances Kastner, Ks. Food Dealers Assn.  
Don Rutledge, SRS  
David Debenham, Office of Att'y Gen'l

Others attending: See attached list

### **SB 156 - Civil liability for parents and guardians of minors who shoplift**

Conferee Grant testified as a proponent of **SB 156** on behalf of the Kansas Retail Council, a division of the Kansas Chamber of Commerce and Industry. He stated that **SB 156** would make civilly liable, the parents or guardians of a minor who shoplifts. He briefly discussed statistics related to shoplifting and two amendments to the bill which he asked the committee to consider. (attachment 1)

Senator Huelskamp appeared before the committee to introduce his constituent, Conferee Fisher. Mr. Fisher testified as a proponent of **SB 156** which he stated would require parents to be responsible for their children's actions. He related statistics on shoplifting and informed the committee about states who have a bill similar to **SB 156**. He gave personal testimony about the negative financial effects of shoplifting on J.C. Penney stores throughout the State of Kansas. He cited factual stories about shoplifting incidents and stated that juvenile shoplifting is a major part of J.C. Penney's losses. He described methods juveniles use to steal and stated that for some juveniles, stealing is an initiation rite to become a member of a gang. He requested committee favorably consider **SB 156** (attachment 2)

Conferee Kastner appeared before committee as a proponent of **SB 156** stating that this bill will allow parents to have the responsibility of accepting the cost of their offspring's actions as it pertains to shoplifting and respectfully requested committee's favorable consideration. (attachment 3)

Conferee Rutledge appeared before committee representing SRS which takes a neutral position on **SB 156**. Mr. Rutledge stated that, as proposed, **SB 156** may have unintended consequences of concern to the SRS. After discussing those concerns Mr. Rutledge stated that the SRS recommends the bill be amended to remove the civil liability of guardians for shoplifting by a minor in their care. (attachment 4)

Senator Harris closed the hearing on **SB 156** with no action taken at this time and opened the meeting for subcommittee reports.

### **SB 261 - Increased penalties and longer time limitations for crime of deceptive commercial practices.**

Senator Emert reported on **SB 261** which was brought forth with a request by the office of the Attorney General. The bill relates to the crime of deceptive commercial practices. After covering amendments to portions of the bill Senator Emert stated that the subcommittee resolved that **SB 261** be passed out of committee and recommended favorably for passage. (attachment 5) Senator Feleciano moved to adopt the technical amendments and adopt SB 261 as amended recommending it favorable for passage. Senator Goodwin seconded. Motion carried.

### **SB 262 - Responsibilities of attorney general in capital murder and hard 40 sentencing**

**proceedings.**

Senator Emert reported that **SB 262** would allow the Attorney General, who is often the lead attorney for death penalty cases, to make necessary decisions in death penalty cases. Senator Emert covered other provisions in the bill and stated that the subcommittee resolved that **SB 262** should be passed out of committee recommended favorably for passage. (attachment 6) David Debenham from the AG's office answered questions from committee members. Senator Oleen moved that the portion of subcommittee report regarding SB 262 be passed out of committee favorable for passage and placed on the consent calendar. Senator Schraad seconded. Motion carried.

**SB 263 - Prosecutions right to discovery and inspection of materials to be produced at any hearing**

Senator Emert reported on **SB 263**, an amendment to specifically provide for reciprocal discovery by the state of scientific or medical reports, books, papers, documents or tangible objects which the defendant intends to produce at any hearing. The subcommittee recommended **SB 263** be passed out of committee favorably for passage. (attachment 7) Senator Emert made a motion to pass SB 263 out favorably for passage and placed on the consent calendar. Senator Schraad seconded. Motion carried.

**SB 264 - Assistance of counsel for persons convicted of capital murder**

Senator Emert reported on **SB 264** and stated that this bill is to assure that trial and post conviction proceedings will be commenced in a timely fashion, additionally assuring the citizens of the state that justice has been served in both an adequate and constitutional manner. The subcommittee recommended the bill favorable for passage. (attachment 8) After noting some technical changes needed in the bill Senator Emert made a motion that SB 264 be passed out favorably as amended. Senator Feleciano seconded. Motion carried.

Agenda item, **SB 140**, was placed in subcommittee chaired by Senator Schraad.

Agenda item, **SB 150**, was not addressed due to the lateness of the hour.

Meeting adjourned at 11:00 a.m. The next meeting will be Friday, February 21, 1997.

# SENATE JUDICIARY COMMITTEE GUEST LIST

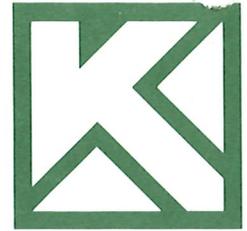
DATE: 2-20

NAME	REPRESENTING
Frances Kastner	Ks Food Dealers Assn
Donavon Rutledge	SRS
Paul Johnson	PACK
Rochelle Chronister	SRS
Jamie Corkhill	SRS (CSE)
Mad A. Allen	OJA
Dawn Spencer	OJA
GREG DEBACKER	National Congress of Fathers & Children
Flora DeBacker	" " " "
Jim McDardt	Ks Education Watch
John Reinhart	Ks Press Assn
JARED MATH	AG
Kelly Luff	AG
Jim Clark	KCOAA
Bill Hayes	Ks Dept. Human Resources
TK Shively	KANSAS LEGAL SERVICES
Charlene Setzler	KOHE
John Badger	SRS
Mike Huttles	SRS



# LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



835 SW Topeka Blvd. Topeka, Kansas 66612-1671 (913) 357-6321 FAX (913) 357-4732

SB 156

February 20, 1997

## KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Senate Judiciary Committee

by

Bud Grant

Vice President and General Manager

Mr. Chairman and members of the Committee:

My name is Bud Grant and I appear on behalf of the Kansas Retail Council, a division of the Kansas Chamber of Commerce and Industry. I appreciate the opportunity to appear before you today in support of SB 156, which would make civilly liable the parents or guardians of a minor who shoplifts.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 47% of KCCI's members having less than 25 employees, and 77% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

My comments will be brief Mr. Chairman because we have with us today someone who can do a far better job than I explaining the need for this bill. He deals with the problem daily. I do want to

*Senate Judiciary  
Attachment 1  
2-20-97*

out that this is not groundbreaking legislation. Thirty-nine of the 48 states which have civil recovery statutes apply them to minors. I am not an attorney, but I believe Kansas has property damage statutes which place responsibility on parents if a minor damages a person's property.

Although adults still make up the largest group of shoplifters (62%), the percentage of teenage shoplifters (38%) is disproportionately high when compared to the make up of the total U.S. population. Teenagers between 13 and 17 years of age accounted for only about 7% of the population in 1995. But they represented one-third of all apprehended shoplifters, up 20% from the previous year.

Finally, Mr. Chairman, I ask the Committee to consider two amendments that have been brought to my attention since the Committee introduced the bill. I agree with the comments of Senator Oleen that on page one, line 28, following the word "state," add "or federal."

The second amendment would be a new Section 1.(c), to read as follows: "Any claim of a merchant arising under Section 1, subsections (a) and (b), may be assigned." Renumber the remaining sections.

Retailers are in the business of selling merchandise, not enforcing the laws. Due to the sheer volume of shoplifting incidents, many retailers assign the responsibility of pursuing recovery to professionals. This new section would clear up any doubt concerning a retailer's ability to make these assignments.

That concludes my comments Mr. Chairman. I am pleased to have Senator Huelskamp here to introduce a constituent.

**TESTIMONY  
BEFORE  
STATE JUDICIARY  
COMMITTEE  
FOR S.B. 156**

**by**

**Don K. Fisher  
Store Manager  
JCPenney, Company  
Dodge City, Kansas**

**February 20, 1997**

*Senate Judiciary  
Attachment 2  
2-20-97*

**Testimony for S.B. 156**

Mr. Chairman and members of the Committee, my name is Don K. Fisher. I am here today on behalf of the Kansas Retail Council, and the JCPenney Company and it's 8,058 associates in the state of Kansas.

I appreciate the opportunity to visit with you today to discuss S.B. 156. Forty nine states now have statutes authorizing the victims of shoplifters to recover civil damages from them. The laws of all but 12 of those states include provisions allowing for recovery from the parents of unemancipated minor shoplifters. Unfortunately, Kansas is one of those twelve. We ask that S.B. 156 fix this problem.

First, let me give you some facts about our Kansas JCPenney Geographic Stores Apprehension of Juvenile Shoplifting along with national figures.

Ages	Kansas JCPenney Apprehensions	%	U.S. National %
1 - 13	15	9.4	U/A
14 - 17	144	90.6	U/A
Total	159*	46.8%	38%*
Adults	181	53.2%	62%*
Total	340*	100 %	100 %

\*See supporting documentation for District, Liberal and Garden City.

Please note the times and months of apprehension for Kansas JCPenney Stores:

Rank	Time	Month
#1	4 - 5 PM (school is out)	#1 November
#2	6 - 7 PM	#2 October
#3	3 - 4 PM (school is out)	#3 December

**We in the business sector desperately need you help!**

**Here is how shoplifting affected some of our geographic stores in Kansas.**

**Metro stores are not listed.**

<u>Location</u>	<u>Dollars</u>	<u>Percent of Sales</u>
Garden City	\$ 278,971	3.9%
Manhattan	242,193	2.9
Hutchinson	171,401	2.4
Lawrence	168,102	1.7
Hays	158,401	2.9
Salina	140,258	1.9
Great Bend	135,939	2.5
Pittsburgh	96,068	1.7
Emporia	72,016	1.8
Dodge City	61,094	1.3
Leavenworth	60,870	1.5
<hr/>		
Total Kansas Geographic District	\$1,584,313	2.2%

**Our total district shrinkage was \$2,618,849 or 2.14%. The five metro stores in Kansas total \$1,403,902 or 1.2%. This Cost the company sales and it cost our employees in benefits and salary increases. If we do not sell our goods, we do not make money so we cannot do what we would like to do for our employees. Shoplifting affects the Manager's salary directly. Ex. Personally \$8,000 in 1995.**

**We even have managers that have been demoted due to inability to account for inventory when audits show shoplifting is the major cause. I have had this happen to me in my career.**

**Just think, if profits from this \$2,988,215 could have been put back into the local and state economies through salaries, benefits, taxes, remodels, etc. We are one company. What about Wal-Mart, Dillards, May Co., Anthonys, and many more?**

**What would these dollars do for the state economy? We must remember this juvenile shoplifting, as all shoplifting is a cost of doing business that is passed on to the consumer in cost. This figure is greater than the cost of heat and lights.**

**Fact: Juvenile Shoplifting is a major part of our losses.**

**Fact: Juveniles do the following:**

- **Shoplift due to "GANG" initiation. Older gang members have the juveniles do it because they suffer little , if any punishment. Therefore, the older gang members stay out of trouble. this is a good fund-raiser for the gang. Ex. Black jeans exhibit.**
- **Juveniles shoplift what they want but cannot pay for due to lack of money.**
- **Peer pressure to see if they can get away with it.**
- **Shoplifting is "NO BIG DEAL" in today's society. Shoplifting is a joke to kids. They laugh at police. Ex. Emporia JCPenney, Debbie Campbell Manager letter.**
- **Some parents promote shoplifting. If the retailer gets a bad stop, a false arrest suit is then involved. Ex. \$400,000 suit pending in one state. This law will not stop this lawsuit, we still need to have good stops.**

**Juvenile ways to steal are:**

- **Clothes or items are hidden on their person.**
- **Magnets are carried in pockets to disconnect ink tags and J tags.  
Ex. Sensor Tag Remover**
- **Some juveniles in Dodge City have access to a sensor tag remover.  
Ex. Sensor gun exhibit.**
- **Groups of juveniles enter businesses and cause a disturbance so one or more can shoplift since attention of associates is diverted to the disturbance. This can be gang related.**
- **“Gangs” have had weapons on their person. Some Loss Prevention Officers are wearing bullet proof vest in some states. Ex. Pueblo, Colorado JCPenney. This is 259 miles from Dodge City.**
- **Torn clothing due to sensor tags or ink stained clothing from ink tags is a status symbol. It shouts “I stole this garment!”**

We spend money on security devices, cameras, and loss prevention hours, meetings, and still cannot catch everyone. Several store managers have told me they could not update their stores in 1996 or 1997 due to shoplifting losses. This is not only a loss to the store but a loss to the consumer. The consumer loses store ambiance of:

- New paint
- New carpet
- New fixtures
- New visual presentation displays.

Instead, the criminal element wins again.

We need to ask ourselves, when is enough, enough? We believe it is now! Now is the time to fix the problem with S.B 156. Let's give parents a tool they have not had before. There are some parents who try hard to raise their children right but because of outside peer pressure and influences, the kids steal their first item and then bigger ones. The parents have failed. Again, S.B. 156 gives them another tool.

We believe, based on parents response to calls when juveniles are caught that some parents just do not care what their kids have done. Some say "you are wrong, my kid would not shoplift." S.B 156 would make them believers plus have them look at problem juveniles differently. Parents need to be accountable for their children. We need S.B 156!

**S.B. 156 would be a tool to help parents because teenagers will realize their parents are accountable and responsible. They will know the parents will have to pay for their crime of shoplifting.**

**New Jersey and California have addresses this topic back in the 1970's. We are asking that Kansas react now. Note examples shown.**

**Shoplifting is a crime. It is stealing! Once juveniles are successful stealing their first package of gum at the 7-11 store , bigger items will follow which become more costly.**

**I represent employers and employees just as you represent your constituents. We as managers must react to the need and wants of our employees. Why should their salaries and benefits be affected by juvenile shoplifting? In 1993, our company match was \$.93 for every dollar saved in our associate's savings and profit sharing plan due to lower shoplifting losses. In 1996, due to increased shoplifting, the company match was only \$.76 for every dollar saved. How would you feel if this was your benefit?**

**We are asking you to react and vote yes to S.B 156. We think it is time that we help our children. The penalty may change the juveniles habits before they become more serious.**

**I have discussed with you the JCPenney Company Geographic District and Metro stores. We all must think about what juvenile shoplifting costs all retailers whether national chains, regional businesses or local businesses in the state of Kansas.**

**Let's "Make it Happen" by working together to pass S. B. 156. We need this bill. Remember, currently Kansas is one of twelve states without this law.**

**Thank you so much for your time. I will be glad to answer any questions.**

AGE GROUP SUMMARY FOR 1996

UNIT: ALL

SSTAGER

ENTITY DESC	1-13		14-17		18-24		25-60		61+		AVG AGE	
	M	F	M	F	M	F	M	F	M	F	M	F
01 WOMENS ACCE	0	0	1	0	5	0	0	0	0	0	17	
02 COSMETICS	0	0	0	0	0	1	0	0	0	0		22
04 LINGERIE/SL	0	1	0	7	0	2	0	0	0	0	20	
06 WOMENS HOSI	0	0	0	0	0	1	0	0	0	0		15
07 DRESSES/SUI	1	0	0	1	0	0	0	3	0	0	1	22
16 JEWELRY	0	0	0	1	0	2	2	2	0	0	35	23
20 MENS ACCESS	2	0	6	2	6	1	0	0	0	0	16	16
21 MENS SPORTS	0	0	7	2	5	5	2	1	0	0	19	20
22 YOUNG MENS	0	1	27	7	32	15	2	4	0	0	18	19
23 MENS CLOTHI	0	0	1	0	1	0	0	0	0	0	17	
24 MENS SHOES	0	0	0	0	0	0	0	1	0	0		45
30 INFANTS	0	0	0	0	0	5	0	1	0	0		23

PF7 FOR PREV. PAGE

PF8 FOR NEXT PAGE

PF3 TO CANCEL REPORT MORE

AGE GROUP SUMMARY FOR 1996

UNIT: ALL

SSTAGER

ENTITY DESC	1-13		14-17		18-24		25-60		61+		AVG AGE	
	M	F	M	F	M	F	M	F	M	F	M	F
GIRLS	0	1	0	2	0	0	1	0	0	0	27	15
32 BOYS	3	0	1	0	1	1	1	1	0	0	17	27
33 CHILDRENS SI	1	0	0	0	0	0	0	0	0	0	13	
40 BEDDING/ACC	0	0	0	1	0	0	0	2	0	0		29
48 ADULT ATHEL	1	0	4	0	2	0	0	1	0	0	15	26
49 ATHLETIC AP	3	0	44	12	27	13	6	4	0	0	18	19
63 JUNIOR SPRT	1	0	0	10	0	16	1	5	0	0	17	21
71 PETITE SPOR	0	0	0	0	0	0	0	0	0	1		83
81 CAREER MISS	0	0	0	1	0	0	1	0	0	0	46	16
89 WOMEN'S SPT	0	0	0	0	1	0	0	1	0	1	21	45
99 CATALOG MERI	0	0	5	2	3	5	3	0	0	0	19	18
TOTAL	12	3	96	48	85	67	19	26	0	2	18	21

PF7 FOR PREV. PAGE

PF8 FOR NEXT PAGE  
END OF REPORT

PF3 TO CANCEL REPORT

159  
Juv.

181  
ADULT

ACTIVITY ANALYSIS REPORT  
 RUN ON 02/18/97 AT 13.40.56

SSTAANA  
 UNIT # ALL

	OFFICER HOURS		AVG HRS PER WEEK		TOTAL NO. SHOPLIFTERS		RECOVERY TOTAL		DOLLARS AVG/REC	
	1996	1995	1996	1995	1996	1995	1996	1995	1996	1995
MAR	1028	759	205	151	21	23	874	1572	41	68
APR	824	488	206	122	14	12	1306	677	93	56
MAY	861	404	215	101	23	13	2247	678	97	52
JUN	824	479	164	95	22	16	1220	521	55	32
JUL	555	408	138	102	22	13	7821	663	355	55
AUG	927	490	231	122	24	19	1149	1774	47	93
SEP	847	304	169	60	30	8	1960	198	65	24
OCT	1349	366	337	91	31	14	4332	862	144	61
NOV	1047	281	261	70	45	10	2867	1012	63	56
DEC	1498	456	299	91	63	23	5685	2138	91	92
JAN	1809	680	452	170	40	26	3478	4717	86	181
TOTAL	1218	390	304	97	30	18	1609	1233	53	68
TOTAL	12787	5505	3196	1376	365	203	\$34548	16045	\$95	79

NOTE: IF NO SHOPLIFTERS REPORTED FOR A PERIOD, OFF HOURS CAN'T BE FOUND.

MORE

9.

2-10

SHOPLIFTING APPREHENSIONS BY TIME-OF-DAY FOR 01/96 TO 01/97 SSTCAL  
 RUN ON 02/18/97 UNIT: ALL

TIME\DAY	SUN	MON	TUE	WED	THU	FRI	SAT	TOTAL
9:00-10:59AM					2	1	2	5
11:00-11:59AM	2	3	3		1	1	3	13
12:00-12:59PM	1		4	9	1	3	9	27
1:00- 1:59PM	1	2	9	3	6	1	6	26
2:00- 2:59PM	5	8	2	7	3	8	7	46
3:00- 3:59PM	6	4	11	4	2	5	11	47
4:00- 4:59PM	15	9	8	4	13	8	12	69
5:00- 5:59PM	9	3	1	3	5	3	15	38
6:00- 6:59PM	4	6	8	12	9	6	10	55
7:00- 7:59PM		2	4	2	13	4	8	33
8:00- 8:59PM		4	1	7	5	4	3	24
9:00- 9:59PM				1			7	8
10:00-11:59PM								
12:00- 8:59AM								
TOTAL	42	41	51	52	60	44	93	383

PF3 TO CANCEL REPORT

END OF REPORT

From: WACKELMI--DALH

Date and time 02/14/97 13:19:08

From: william ackelmire .unit 2197-2 .garden city, ks.  
Telephone: 316-275-9115  
SUBJECT: shoplifting in garden

dear don,  
this past year we have apprehended 60 juvenile shoplifters  
with a 3.9 shrinkage we missed quite a few more. we use 5  
loss prevention officers in our tiny store. it is a major  
problem, i hope that the legislature will pass the reimbursement  
bill it has. i hope this is what you needed!!

bill ackelmire  
store manager

//

2-12

# JCPenney Internal Correspondence

To: Don Fisher  
Unit 1153-6

From: Loss Prevention  
Unit 2238-4  
Date: February 17, 1997

Re: Apprehension Statistics

Mr. Fisher;

Here are the apprehension statistics from our store that you requested.

## ***Apprehension***

From May 1996 to date, seven juveniles have been apprehended in the store. The total dollars recovered as a result of these apprehensions is \$2,334.58. By way of comparison, three adults have been apprehended for a total recovery of \$319.65. Juveniles account for 70% of our apprehensions. 88% of the dollars recovered by apprehension are recovered from juvenile shoplifters. According to the Retail Theft Trends Report for 1996 only 31% of shoplifters apprehended are juveniles so we are significantly higher than the national average. Juveniles have been involved in a variety of theft activity. Of the seven juveniles apprehended, 2 were apprehended using stolen JCPenney cards. One was apprehended after using a stolen check, and the remaining four were shoplifting.

There have also been a number of other incidents involving juveniles including shoplifting preventions, disturbances and cases where juveniles were acting in concert with adults in the attempted theft of merchandise. The only area where there has not been an indication of juvenile involvement is internal theft. There have been no cases of internal theft involving juveniles.

## ***Merchandise Recovered***

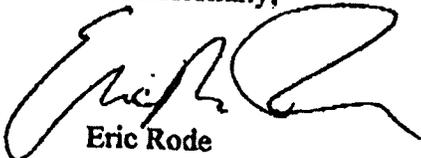
In the 14-17 year old age group we have apprehended 4 subjects with stolen merchandise from entity 49 and 1 with stolen merchandise from entity 63. Our shrinkage in entity 49 in 1996 was \$22,597. Our shrinkage in entity 63 was \$39,007. Entity 49 is far and away the area where we see the most theft and attempted theft activity by juveniles. In a recent incident, over \$200.00 worth of stolen merchandise from various retailers was recovered from a 5 year old female subject. Among the merchandise recovered was children's Nike apparel.

**Prosecution**

All seven of the juvenile subjects were referred for prosecution. Of that seven 4 cases are currently pending. Of the remaining cases, one subject was sentenced to diversion without ever seeing a judge. The other two subjects both failed to appear at their respective hearings. No effort has been made to locate and arrest these subjects. Our merchandise remains in evidence indefinitely and there is no way to pursue civil recovery from the parents. Under K.S.A. 38-120, businesses may only pursue recovery from parents if the property taken by the juvenile has been damaged or destroyed. There is no other provision to my knowledge related to recovery from minor's parents. Prosecution of juvenile offenders has been ineffective to say the least. It is interesting to note that in the one case that was tried, the subject's mother was notified of the theft. In the other two cases, no parents were available to be notified by Loss Prevention or the Police of their child's arrest.

I hope that this information is helpful in your endeavors.

Professionally,



Eric Rode  
Loss Prevention

Fr. DCAMPBEL--DALH  
To: DKFISHER--DALH

Date and time 02/18/97 16:33:48

FROM: DEBORAH A CAMPBELL UNIT 2210 Emporia ks. 316-342-5491

SUBJECT: Juveniles  
35% of our shoplifting apprehensions are from juveniles. The majority of our thwarted shoplifting attempts are juveniles that consistantly are the same people. We hired off-duty police officers for loss prevention and they can point out known shoplifters that are juveniles, repeat offenders that are out shoplifting over and over. They have open disrespect for police officers as we call the police whenever certain juveniles are in the store since they are there for one reason and that is to steal something. They know nothing is going to happen to them so they outwardly harrass sale associates and even police!!!!

CORDIALLY  
deborah a campbell  
store manager  
2210-3 emporia ks.

# THEFT'S MULTIBILLION DOLLAR IMPACT ON RETAILERS

The results of two comprehensive security surveys provide ample ammunition for loss prevention managers looking to rationalize or beef up their companies' security expenditures. The surveys reveal that shoplifting is a year-round problem across all markets, costing retailers nearly \$10 billion annually. And that loss jumps dramatically—to \$27 billion or 1.9% of annual sales—when shoplifting is combined with employee theft, vendor fraud and administrative error.

"The security executives responding to our survey believe that employee theft is their firm's most significant source of financial loss, reporting an average loss of \$142.49 per shoplifting incident compared to \$737.31 per employee theft incident," says Richard C. Hollinger, Ph.D., director of the "1996 National Retail Security Survey," conducted by the Security Research Project at the University of Florida, and funded through a research grant from Sensormatic Electronics Corp., Boca Raton, Fla.

The highest levels of losses were reported by camera and photography (6.5%), optical (4%), music and video (2.5%), and cards and novelties (2.5%). Music and video stores also were found to have the highest incidence of empty package discoveries, price tag switching and electronic article surveillance (EAS) and dye tag removals.

The lowest levels of shrinkage were found among retailers who control access to their merchan-

**Juveniles represent an increasing percentage of apprehended shoplifters.**

dise, such as liquor and wine, which averaged 0.39%," Hollinger says.

**Strategies:** The survey found that retailers are utilizing a number of different strategies to control their losses, from high-tech electronic devices to low-tech honesty incentives.

The most popular countermeasure in the war against shrinkage is the use of asset control policies in day-to-day store operations. Refund controls, void controls, controlled access to cash and merchandise receiving controls ranked as the most widely used techniques. More technologically advanced items, notably inventory barcoding/scanning, POS exception reports and POS barcoding/scanning, were targeted for increased use during the upcoming year.

Pre-employment screening programs ranked as another popular security measure. The top measures targeted for increased use included criminal conviction checks, credit checks, past employment verification and drug screening. Many companies also indicated they intended to in-

crease their usage of loss prevention awareness programs.

The survey examined 25 loss prevention systems, ranging from high-tech EAS systems to more low-tech strategies, such as observation mirrors and uniformed guards. Only two of the 25 systems surveyed—burglar alarms and live closed-circuit television (CCTV) cameras—were indicated to be in widespread use throughout the retail industry.

Survey participants tended to show greatest interest in the newer, more technologically advanced techniques, with POS/CCTV interfacing and vendor source tagging rated among the "hottest" systems.

"Source tagging is running like a steamroller through the discount, music and chain drug store industry," says Hollinger. "Manufacturers are beginning to respond in huge numbers to retailers' demand for source-tagged items."

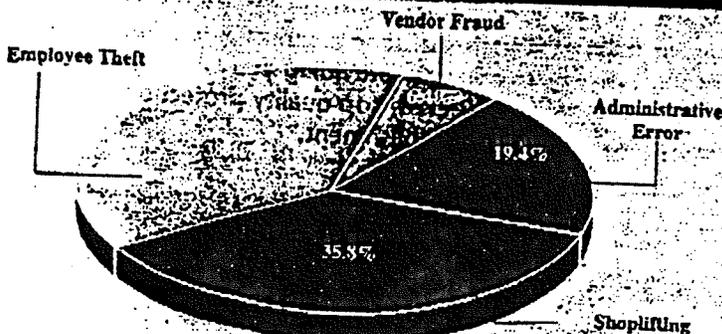
The survey confirmed that personnel issues can have a significant impact on loss prevention. Those firms with salesperson compensation levels above that paid by their competitors tended to experience lower inventory shrinkage levels.

"The data suggests that companies may be deluding themselves if they believe that low-wage scales are saving them money," Hollinger says. "Attracting quality employees with competitive wages can have a direct benefit to the bottom line of the company through lower shrinkage."

**Shoplifting:** The second survey, the "1996 Retail Theft Trends Report," is concerned exclusively with shoplifting. It details the domino effect that stolen items have on the bottom line. The study's findings were compiled from 171,141 shoplifting incidents reported by 171 retail chains.

"When merchandise is stolen, it can't be sold, which means that sales figures will be reduced. Also, replacing stolen merchandise means diverting capital and also entails repurchasing and reprocessing expenses. Gross margins also will be reduced," says Read Hayes, consultant for Loss Prevention Specialists, Winter Park, Fla., which co-sponsored the report with Sensormatic

**SOURCES OF SHRINKAGE**  
(mean percentages)



Source: Security Research Project, University of Florida/Sensormatic Electronics Corp.

15

2-16

### INVENTORY SHRINKAGE (SHOWN AS PERCENTAGE)

Type of retailer (number of total respondents)

Auto parts and tires (10)	1.82
Books and magazines (7)	1.91
Camera and photography (2)	5.5
Cards, gifts and novelties (14)	2.49
Children's apparel (6)	1.49
Computers and software (4)	1.38
Consumer electronics (3)	0.33
Convenience store (9)	1.09
Department store (22)	2.07
Discount store (23)	2.14
Drug store (14)	1.75
Furniture (3)	2.02
Home center/hardware (20)	1.6
Household furnishings (12)	1.47
Jewelry (6)	2.1
Liquor, wine and beer (3)	0.39
Men's apparel (4)	1.3
Office supplies (2)	1.17
Optical (2)	3.93
Other apparel (12)	2.04
Recorded music and video (25)	2.5
Shoes (6)	1.22
Sporting goods (16)	1.5
Supermarket/grocery (33)	1.78
Toys and hobbies (3)	1.63
Women's apparel (25)	1.94
Other (3)	1.36
<b>OVERALL (239)</b>	<b>1.87</b>

Source: Security Research Project, University of Florida/Sensormatic Electronics Corp.

#### Electronics.

The survey found that across all retail categories, the items most frequently confiscated from shoplifters were tobacco products, athletic shoes and apparel (primarily logo and brand name apparel, designer jeans and undergarments).

"The items most frequently stolen tend to be in high demand, both to shoplifters and to a store's honest shoppers," Hayes adds.

While the months of December and March experience the largest percentage of theft apprehensions, the figure is just 3% higher than January, the lowest month for apprehensions. Similarly, while Saturday remains the top apprehension day, it was only about 5% greater than Sunday, the least frequent day for shoplifter apprehensions.

"The data firmly supports the theory that shoplifting is a year-round activity," Hayes adds. "It also suggests a flattening out of

### MOST FREQUENTLY SHOPLIFTED MERCHANDISE BY TYPE OF RETAILER

Type of Retailer	Merchandise
Auto parts	Auto accessories
Books	Cassette tapes
Consumer electronics	Compact discs
Department stores	Clothing, shirts
Discount stores	Clothing, undergarments, compact discs
Drug stores	Cigarettes, batteries
General merchandise	Jewelry
Grocery/supermarket	Over-the-counter (OTC) medicine, health and beauty aids, cigarettes
Home and hardware	Assorted hand tools
Music	Compact discs
Shoe stores	Sneakers
Specialty	Bed sheets
Specialty apparel	Assorted clothes, shoes
Sporting goods	Athletic shoes
Theme parks	Key chains, jewelry
Toys	Action figures
Video	Video games

Source: Loss Prevention Specialists/Sensormatic Electronics Corp.

reported crime by day of the week."

One of the most significant findings of the survey was the increased percentage of juvenile

shoplifters. Although adults still make up the largest group of shoplifters (62%), the percentage of teen-age shoplifters (38%) is disproportionately high when compared to the make up of the total U.S. population.

"Teen-agers between 13 and 17 years of age accounted for only about 7% of the population in 1995," Hayes explains. "But they represented one-third of all apprehended shoplifters, which was up some 20% from the previous year. This disparity is cause for concern."

The security consultant advises retailers to pay particular attention to the ratio of adults to juveniles in their stores.

"If, for instance, only 15% of your customers are under the age of 18, but almost 30% of your apprehended shoplifters are juveniles," he says, "the young shoppers deserve considerably more personal attention. You need to watch them carefully."

# HOPLIFTING: THE FACTS

- There are an estimated 23 million shoplifters in our nation today. Approximately 1 in every 11 Americans.
- Retailers lose \$25 million a day to shoplifting.
- There is no profile of a typical shoplifter. A shoplifter can be anyone.
- Shoplifters steal in all types of stores...69% say they steal in department stores, 63% supermarkets, 57% specialty shops, 54% convenience stores, 47% drug stores and 27% all other type stores.
- Contrary to popular belief, men and women shoplift equally as often.
- About 25% of shoplifters apprehended are juveniles...75% are adults.
- Shoplifters say they are caught an average of only once every 49 times. They are turned over to the police 50% of the time.
- A small percentage of shoplifters are "professionals" who steal solely for resale or profit as a business. These include drug addicts who steal to feed their habit, hardened professionals who steal as a lifestyle and international shoplifting gangs who steal for profit as a business.
- The vast majority of shoplifters are "non-professionals" who steal, not out of financial need or greed but as a response to social and personal pressures in their life.
- Approximately 70% of non-professional shoplifters don't plan their thefts in advance. 30% do.
- Shoplifters often buy some merchandise and steal other merchandise (59% frequently, 35% sometimes and 6% never).
- Shoplifters classified as "first offenders" admit to stealing from retail stores at the following frequency:
  - 13% say they steal daily or several times a day.
  - 57% say they steal monthly or more often.
  - 27% say they steal weekly or more often
  - 43% steal less than monthly.
- The excitement generated from "getting away with it" produces a chemical reaction resulting in what shoplifters describe as an incredible "high" feeling. Many shoplifters will tell you that this high is their "true reward", rather than the merchandise itself.
- Drug addicts who have become addicted to shoplifting, describe shoplifting as equally addicting as drugs.
- 89% of kids say they know other kids who shoplift.
- 66% say they hang out with those kids.
- 1 in 5 adults say they started shoplifting in their teens.
- 57% of adults and 33% of juveniles say that it is hard for them to stop shoplifting, even after getting caught.
- In one survey of shoplifters who called the Shoplifters Anonymous Helpline, 69% said they had previously been caught and prosecuted, 12% said they had been caught but not prosecuted and 19% said they were never caught at all.
- Most non-professional shoplifters don't commit other types of crimes. They'll never steal an ashtray from your house and will return to you a \$20 bill you may have dropped. Their criminal activity is restricted to shoplifting and therefore, any rehabilitation program should be "offense-specific" for this crime. ■

 **SHOPLIFTERS ALTERNATIVE®**

**SHOPLIFTING** — A Report For Retailers And  
The Criminal Justice System

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February 20, 1997

**SUPPORTING SB 156**

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**DIRECTOR OF  
GOVERNMENTAL AFFAIRS**

FRANCES KASTNER

Thank you for the opportunity to express the views of the Kansas Food Dealers Association. Our membership includes retailers, distributors and manufacturers of food products.

Those of you who have considered shoplifting bills in earlier legislative session, know we are very much in favor of a bill like SB 156.

One common thread we've seen binding together a group of legislators is the desire to allow parents to raise and to educate their children without government infringements and restraints.

Let us now go that extra step and show we mean what that theory implies: That parents WANT the responsibility of raising their children in ALL areas of their lives.

Passage of SB 156 will allow parents to have the responsibility of accepting the COST of their offspring's actions as it pertains to shoplifting.

We respectfully request your favorable consideration of SB 156.

Frances Kastner, Director  
Governmental Affairs, KFPA

*Senate Judiciary  
Attachment 3*

s sub. 2/20 att 11

**KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES**  
**Rochelle Chronister, Secretary**

**Committee on Judiciary**

**Testimony on Senate Bill 156 pertaining to civil actions against parents of minors who shoplift.**

**February 20, 1997**

Mr. Chairman and Members of the committee:

Thank you for the opportunity to present testimony on behalf of Secretary Chronister concerning Senate Bill 156.

As proposed, the language of Senate Bill 156 may have unintended consequences of concern to the Department of Social and Rehabilitation Services.

The Department is committed to assisting families to participate in providing safe and permanent alternatives for the care of a child when the child's parents fail to do so. One option available is what is known as "kinship" care in which a person with whom the child has close emotional ties, usually a relative, accepts the parenting role for the child. When permanent adoption is not possible or appropriate, guardianship may be explored as an alternative to the impermanence of foster care.

A possible unintended consequence of Senate Bill 156 is that potential guardians for a child may be reluctant to accept the liability which would accompany becoming the child's guardian.

The department recommends that Senate Bill 156 be amended to remove the civil liability of guardians for shoplifting by a minor in their care. This change is compatible with an existing section of the Probate Code [K.S.A. 59-3018 (f)] which provides that guardians are not obligated to use the guardian's own financial resources for the support of a ward.

Teresa Markowitz  
Commissioner  
Children and Family Services  
(913) 296-4640

For: Rochelle Chronister  
Secretary  
Department of SRS

*Senate Judiciary  
attachment  
2-20-97*

JUDICIARY SUBCOMMITTEE REPORT - Senate Bill 261  
Friday, February 14, 1997

Members: Senator Tim Emert  
Senator Greta Goodwin

SB 261 was brought forth with a request by the office of the Attorney General (Steve Rarrick, Deputy, appearing as a conferee) and relates to the crime of deceptive commercial practices.

The first section of the bill would increase the statute of limits for this crime from two years to five years. Testimony was at often times the victims of these crimes which are very elderly and by the time the victim is willing to bring complaint to the criminal action, the statute of limitations has run.

The second section amends the definitions of penalties contained in K.S.A. 21-4403. The definition of a deceptive commercial practice would be amended to include the knowing "omission" of a material fact.

The next amendment amends the definition of "sale" to include "lease" and "assignment". These transactions should be included in the definition due to the prevalence of leases and assignments in consumer transactions.

Next, the bill enhances the penalties for deceptive commercial practices from a class B nonperson misdemeanor. Values less than \$500 would constitute a class A nonperson misdemeanors, values from \$500 to \$25,000 would constitute a severity level 9, nonperson felonies and values of more than \$25,000 would constitute a severity level 7, nonperson felonies. In each of these cases it would not be a significant impact on the prison population in as much as multiple offenses would have to occur before there will be presumptive imprisonment.

Finally, the bill would give the Attorney General concurrent jurisdiction with county and district attorneys. This should provide an enhanced tool to fight these financial crimes. Attached is a balloon to correct an error on page 1, line 40. This amendment replaces the word "trade" with the word "commercial" to refer to the correct name of the crime of deceptive commercial practice under K.S.A. 21-4403.

Your subcommittee resolves that SB 261 should be passed out of committee and recommended favorably for passage.

*Senate Judiciary  
Attachment 5  
2-20-97*

## SENATE BILL No. 261

By Committee on Judiciary

2-10

9 AN ACT concerning crimes and punishment; relating to deceptive com-  
10 mercial practices; time limitations; penalties; amending K.S.A. 21-4403  
11 and K.S.A. 1996 Supp. 21-3106 and repealing the existing sections.

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 1996 Supp. 21-3106 is hereby amended to read as  
15 follows: 21-3106. (1) A prosecution for murder may be commenced at  
16 any time.

17 (2) Except as provided by subsection ~~(7)~~ (8), a prosecution for any of  
18 the following crimes must be commenced within five years after its com-  
19 mission if the victim is less than 16 years of age: (a) Indecent liberties  
20 with a child as defined in K.S.A. 21-3503 and amendments thereto; (b)  
21 aggravated indecent liberties with a child as defined in K.S.A. 21-3504  
22 and amendments thereto; (c) enticement of a child as defined in K.S.A.  
23 21-3509 and amendments thereto; (d) indecent solicitation of a child as  
24 defined in K.S.A. 21-3510 and amendments thereto; (e) aggravated in-  
25 decent solicitation of a child as defined in K.S.A. 21-3511 and amend-  
26 ments thereto; (f) sexual exploitation of a child as defined in K.S.A. 21-  
27 3516 and amendments thereto; or (g) aggravated incest as defined in  
28 K.S.A. 21-3603 and amendments thereto.

29 (3) Except as provided in subsection ~~(7)~~ (8), a prosecution for any  
30 crime must be commenced within 10 years after its commission if the  
31 victim is the Kansas public employees retirement system.

32 (4) Except as provided by subsection ~~(7)~~ (8), a prosecution for rape,  
33 as defined in K.S.A. 21-3502 and amendments thereto, or aggravated  
34 criminal sodomy, as defined in K.S.A. 21-3506 and amendments thereto,  
35 must be commenced within five years after its commission.

36 (5) Except as provided in subsection ~~(7)~~ (8), a prosecution for any  
37 crime found in the Kansas medicaid fraud control act must be com-  
38 menced within five years after its commission.

39 (6) *Except as provided in subsection (8), a prosecution for a deceptive*  
40 *trade practice as defined in K.S.A. 21-4403 and amendments thereto must*  
41 *be commenced within five years after its commission.*

(6) trade commercial

42 (7) Except as provided by subsection ~~(7)~~ (8), a prosecution for any  
43 crime not governed by subsections (1), (2), (3), (4) and (5) and (6) must

2-5

1 be commenced within two years after it is committed.  
2 ~~(7)(8)~~ The period within which a prosecution must be commenced  
3 shall not include any period in which:  
4 (a) The accused is absent from the state;  
5 (b) the accused is concealed within the state so that process cannot  
6 be served upon the accused;  
7 (c) the fact of the crime is concealed;  
8 (d) a prosecution is pending against the defendant for the same con-  
9 duct, even if the indictment or information which commences the pros-  
10 ecution is quashed or the proceedings thereon are set aside, or are re-  
11 versed on appeal;  
12 (e) an administrative agency is restrained by court order from inves-  
13 tigating or otherwise proceeding on a matter before it as to any criminal  
14 conduct defined as a violation of any of the provisions of article 41 of  
15 chapter 25 and article 2 of chapter 46 of the Kansas Statutes Annotated  
16 which may be discovered as a result thereof regardless of who obtains  
17 the order of restraint; or  
18 (f) whether or not the fact of the crime is concealed by the active act  
19 or conduct of the accused, there is substantially competent evidence to  
20 believe two or more of the following factors are present: (i) The victim  
21 was a child under 15 years of age at the time of the crime; (ii) the victim  
22 was of such age or intelligence that the victim was unable to determine  
23 that the acts constituted a crime; (iii) the victim was prevented by a parent  
24 or other legal authority from making known to law enforcement author-  
25 ities the fact of the crime whether or not the parent or other legal au-  
26 thority is the accused; and (iv) there is substantially competent expert  
27 testimony indicating the victim psychologically repressed such witness'  
28 memory of the fact of the crime, and in the expert's professional opinion  
29 the recall of such memory is accurate and free of undue manipulation,  
30 and substantial corroborating evidence can be produced in support of the  
31 allegations contained in the complaint or information but in no event may  
32 a prosecution be commenced as provided in this section later than the  
33 date the victim turns 28 years of age. Corroborating evidence may in-  
34 clude, but is not limited to, evidence the defendant committed similar  
35 acts against other persons or evidence of contemporaneous physical man-  
36 ifestations of the crime. "Parent or other legal authority" shall include  
37 but not be limited to natural and stepparents, grandparents, aunts, uncles  
38 or siblings.  
39 ~~(8)(9)~~ An offense is committed either when every element occurs, or,  
40 if a legislative purpose to prohibit a continuing offense plainly appears,  
41 at the time when the course of conduct or the defendant's complicity  
42 therein is terminated. Time starts to run on the day after the offense is  
43 committed.

5-3

5-4

1 ~~(9)(10)~~ A prosecution is commenced when a complaint or informa-  
2 tion is filed, or an indictment returned, and a warrant thereon is delivered  
3 to the sheriff or other officer for execution. No such prosecution shall be  
4 deemed to have been commenced if the warrant so issued is not executed  
5 without unreasonable delay.

6 Sec. 2. K.S.A. 21-4403 is hereby amended to read as follows: 21-  
7 4403. (a) A deceptive commercial practice is the act, use or employment  
8 by any person of any deception, fraud, false pretense, false promise, or  
9 knowing misrepresentation or omission of a material fact, with the intent  
10 that others shall rely thereon in connection with the sale of any mer-  
11 chandise, whether or not any person has in fact been misled, deceived or  
12 damaged thereby.

13 (b) The following definitions shall be applicable to this section:

14 (1) "Merchandise" means any objects, wares, goods, commodities,  
15 intangibles, real estate or services.

16 (2) "Person" means any natural person or his such person's legal rep-  
17 resentative, partnership, corporation (domestic or foreign), company,  
18 trust, business entity or association, and any agent, employee, salesman,  
19 partner, officer, director, member, stockholder, associate, trustee or ces-  
20 tui que trust thereof.

21 (3) "Sale" means any lease, assignment, sale, offer for sale, or attempt  
22 to sell any merchandise for any consideration.

23 (c) This section shall not apply to the owner or publisher of any news-  
24 paper, magazine, or other printed matter wherein an advertisement ap-  
25 pears, or to the owner or operator of a radio or television station which  
26 disseminates an advertisement, when such owner, publisher or operator  
27 had no knowledge of the intent, design or purpose of the advertisement.

28 (d)(1) A deceptive commercial practice is a ~~class B nonperson mis-~~  
29 ~~demeanor of the value of \$25,000 or more is a severity level 7, nonperson~~  
30 ~~felony.~~

31 (2) A deceptive commercial practice of the value of at least \$500 but  
32 less than \$25,000 is a severity level 9, nonperson felony.

33 (3) A deceptive commercial practice of the value of less than \$500 is  
34 a class A nonperson misdemeanor.

35 (e) It shall be the duty of each district attorney and county attorney  
36 in their respective jurisdiction to commence any criminal actions under  
37 this section, and the attorney general shall have concurrent original ju-  
38 risdiction to commence such criminal actions throughout the state where  
39 such violations have occurred.

40 Sec. 3. K.S.A. 21-4403 and K.S.A. 1996 Supp. 21-3106 are hereby  
41 repealed.

42 Sec. 4. This act shall take effect and be in force from and after its  
43 publication in the statute book.

JUDICIARY SUBCOMMITTEE REPORT - Senate Bill 262  
Friday, February 14, 1997

Members: Senator Tim Emert  
Senator Greta Goodwin

(Conferee David B. Debenham, office of the Attorney General)

Reinstatement of the Death Penalty

The office of the Attorney General has been consulted and has provided assistance to county and district attorneys in a vast majority of these cases. Additionally, the Attorney General's office has been directly involved as lead attorney for death penalty cases.

In order to avoid any technical error which could lead to a reversal of a conviction, the Attorney General is being added, with this bill, as one of the attorneys which will have authority to make necessary decisions under K.S.A. 21-4623, K.S.A. 21-2426 and K.S.A. 21-4633.

K.S.A. 21-4623 provides for a request to be made to the court to determine if the defendant is mentally retarded, after the defendant has been convicted of capital murder.

K.S.A. 21-4624 requires the county or district attorney to file a written notice if such attorney intends to seek a separate sentencing hearing to determine whether the defendant should be sentenced to death.

K.S.A. 21-4633 allows the county or district attorney to seek a mandatory sentence of 40 years imprisonment when a court has authorized the prosecution of a juvenile as an adult.

Your subcommittee resolves that SB 262 should be passed out of committee recommended favorably for passage.

*Senate Judiciary  
Attachment 6  
2-20-97*

5 Jul 2/20/97 att 7

JUDICIARY SUBCOMMITTEE REPORT - Senate Bill 263  
Friday, February 14, 1997

Members: Senator Tim Emert  
Senator Greta Goodwin

(Conferee David B. Debenham, office of the Attorney General)

SB 263 amends K.S.A. 22-3212 to specifically provide for reciprocal discovery by the state of scientific or medical reports, books, papers, documents or tangible objects which the defendant intends to produce at any hearing.

Under present law, this material is to be made available to the state only when the defendant intends to produce the material at the trial. This would simply allow such discovery if the defendant intends to introduce this material at any hearing. This would be a rarely used provision in as much as such material is not commonly produced at trial in recent cases and is intended to have a psychiatrist testify at a motion to suppress hearing. Trial court ruled that exchange of such information was not permitted prior to trial.

Your subcommittee resolves that SB 263 should be passed out of committee and recommended favorably for passage.

Senate Judiciary  
attachment 7  
2-20-97

JUDICIARY SUBCOMMITTEE REPORT - Senate Bill 264  
Friday, February 14, 1997

Members: Senator Tim Emert  
Senator Greta Goodwin

(Conferee David B. Debenham, office of the Attorney General)

SB 264 addresses an issue which has arisen out of the Antiterrorism and Effective Death Penalty Act of 1996 signed into law April 29 of this past year. The state of Kansas is obligated to institute a mechanism for the appointment, compensation and payment of reasonable litigation expenses of competent counsel for those individuals who have been charged, convicted and sentenced to death and who are unable to secure counsel due to their indigence.

This bill is to assure that trial and post conviction proceedings will be commenced in a timely fashion, additionally assuring the citizens of the state that justice has been served in both an adequate and constitutional manner.

The primary issue, with regard to this proposed legislation, is the requirement for the Board of Indigents' Defense Services to provide, by rule and regulation, standards of competency and qualification for the appointment of counsel in death penalty cases for those unable to secure representation. This applies both at the trial and appellate levels.

Presently, the Board of Indigents' Defense Services has such guidelines in place as procedures, however, they have not been adopted as rules and regs and the same will be done in the near future.

Additionally, proper implementation of these guidelines will afford state death penalty cases expedited consideration on collateral review in federal court.

The central goal of the bill is to foster timely adjudication at the appellate level and as Congress has stated to "address the acute problems of unnecessary delay and abuse in capital cases."

Your subcommittee resolves that SB 264 should be passed out of committee and recommended favorably for passage.

*Senate Judiciary  
Attachment #  
2-20-97*