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Testimony of Kansas Attorney General Kris W. Kobach

**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
June 13, 2023**

Overview

When one thinks about the explosion of organized retail crime in the United States, the State of Kansas may not intuitively jump to mind. But Kansas is particularly illustrative for two reasons: Kansas is one of the hardest hit states, and we are attempting solutions that other states have not yet tried.

The amount of organized retail crime in Kansas is very high. Kansas is among the top ten states hit by organized retail crime, with approximately \$642 million in products stolen in 2021. When you look at the map of states that have been hit the hardest, you see some states you would expect in the top ten, like California, Texas, and Florida. But you also see two midwestern states—Kansas and Missouri—in the top ten. The reason is almost certainly the I-70 corridor, which has become a pipeline not only for drugs, but also for organized retail crime. There is a link between drug trafficking and organized retail crime. The drug-addicted often become boosters in order to feed their habits, and some fences recruit them specifically. As a result, their role in perpetrating the thefts is significant in many retail crime organizations.

Typical Cases

In the Kansas City area, the prosecution and guilty plea of Frank Santa Maria in March 2023 is illustrative. Santa Maria operated a pawn shop which served as the hub of the organized retail crime network, which also included four boosters who stole the merchandise and for who Santa Maria served as the fence. He sold the stolen products on multiple eBay pages. The more than 100,000 stolen products were sold for a total of over \$3 million. The stores from which the goods were stolen included Home Depot, Lowe's, Walmart, Target, Walgreens, and CVS. The stolen products included ink cartridges, Spypoint cameras, Nikon rangefinders, electric fence systems, Rogaine products, Nicorette products, over-the-counter supplements, and Crest Whitestrips. Because the crimes were both in Kansas and Missouri, providing an interstate nexus, and because the amount stolen was over \$250,000, federal prosecutors were interested; and the case was brought in federal court.

In another Kansas City area case in the same month, Dennis Russell pled guilty regarding a similar scheme. In his case, he owned a pawn shop that fenced more than 14,000 stolen items for a total of \$744,000, mostly on eBay. The targeted stores in Kansas and Missouri were the same. But the stolen items were somewhat different in nature, including robot vacuum cleaners, television streaming devices, and textbooks. Russell knew that the items were stolen and operated a in a network with multiple boosters. Federal prosecutors were involved in this case too.

In another case in a different city in Kansas—one without the interstate nexus—the retail crime organization also centered on a pawn shop, with multiple boosters fencing at that shop. The total was over \$200,000. Again, large box stores were the target of the criminal enterprise.

There are some common features of these criminal enterprises:

1. The boosters almost always steal a dollar amount just below the felony theft level. In Kansas, they steal roughly \$900 to stay below the \$1,000 threshold.
2. The boosters usually operate through “pushouts” or “rollouts,” loading a cart with merchandise and then pushing out the door, knowing that the policy of the corporation prohibits staff from stopping them. With this brazenness comes increased violence, with boosters sometimes assaulting or even using pepper spray against store personnel who dare to intervene.

3. Boosters will hit the same specific store with impunity, sometimes as frequently as 2-3 times per week.
4. The fence at the center of the enterprise is often a pawn shop, but in many instances the fence operates out of a warehouse.
5. Almost all of the stolen products moved by the fences are sold online.
6. The stolen products change over time, as retailers lock up what was previously targeted. Power tools used to be favored, but when the box stores locked them up, the criminal enterprises moved on to other items.

Factors in the Legal System that Exacerbate the Problem

One of the principal reasons that organized retail crime has expanded so quickly is that so many cases do not get prosecuted. That is largely due to the lack of prosecutorial capacity. There is a shortage of prosecutors in most counties. Consequently, property crimes get moved to the bottom of the stack, below person crimes that tend to have a higher profile and present a greater threat to the safety of the community. Compounding this lack of capacity at the county level is a lack of willingness by U.S. Attorneys' offices to prosecute any case that involves less than \$250,000, even if the criminal enterprise crosses state lines.

Investigative capacity is also limited. Police departments are often overwhelmed as multiple boosters hit multiple stores throughout a city every day. There are only so many detectives, and the rate of retail thefts is increasing, not decreasing.

In many jurisdictions, courts are setting bail too low for those criminals who are charged. On top of that, the bail bondsmen are today willing to accept a much lower percentage of the bail amount from the defendant than they were twenty years ago. Consequently, the booster ends up back on the street very quickly even if he is arrested.

Policy Recommendations

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.

At the federal level, legislation like that before this committee is an important step in bringing more prosecutorial resources to the table, where the criminal enterprise involves multiple states. I would also encourage U.S. attorneys' offices not to set such high dollar thresholds for getting involved. That also restricts federal investigative resources. Right now, at least in our part of the country, unless the retail victims can show at least \$250,000 in total thefts, the relevant U.S. attorney's office refuses to allow FBI or DHS resources to be allocated to the case.

Conclusion

Organized retail crime is a problem that is getting worse, not better. And it does not exist in a vacuum. These criminal enterprises often overlap with the trafficking of drugs. In some cases, human trafficking is also involved. In some states, particularly in border states like Texas, the stolen materials are fenced by Mexican cartels. In short, the criminal impact of organized retail crime is larger than just the stolen retail items.

In addition, the economic consequences are greater than just the amount of stolen merchandise. Some \$6.6 billion in state sales taxes are lost and \$15.0 billion in local sales taxes are lost annually. Thousands of jobs are lost when retailers are forced to close the stores that are hit the hardest. In addition, the prices of many consumer goods are driven upwards as retailers compensate for their losses, contributing to the inflation that is eroding the income of every American household.

Finally, there is an additional consequence that is equally, if not more, important: the degradation of the rule of law in America. Our culture and our country suffer when widespread retail theft proliferates and is eventually tolerated.

Many of the solutions to this problem are not complicated. Crime can be deterred with greater investigation and greater prosecution. Ultimately, that is the most effective solution. My hope is that in Kansas, as we turn up the heat on organized retail crime, those criminal enterprises will realize that they are going to get caught; and the increased threat of prosecution will cause this form of crime to

diminish. And regardless of what happens nationally, in Kansas we will fight for a culture where the rule of law prevails, and no-one sees theft as a normal part of life.