

INTERIM JOINT COMMITTEE ON JUDICIARY

Minutes of the 3rd Meeting of the 2022 Interim

August 18, 2022

Call to Order and Roll Call

The 3rd meeting of the Interim Joint Committee on Judiciary was held on Thursday, August 18, 2022, at 11:00 AM, in Room 149 of the Capitol Annex. Representative C. Ed Massey, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative C. Ed Massey, Co-Chair; Senators Danny Carroll, John Schickel, Johnnie Turner, Stephen West, and Phillip Wheeler; Representatives Kim Banta, John Blanton, Kevin D. Bratcher, McKenzie Cantrell, Jennifer Decker, Daniel Elliott, Joseph M. Fischer, Patrick Flannery, Samara Heavrin, Nima Kulkarni, Derek Lewis, Patti Minter, Kimberly Poore Moser, Jason Nemes, and Jason Petrie.

Guests: Shannon Stiglitz, Senior Vice President of Government Affairs, Kentucky Retail Federation; Matthew Rosteet, Kroger Asset Protection Manager, Organized Retail Crime; Nicole Toyloy, Director, Walgreens Asset Protection; and Martin Brock, Chief, North Carolina General Assembly Police Department.

LRC Staff: Roberta Kiser, Randall Roof, Michelle Spears, Lexington Souers, Stacy Byrns Taulbee, and Elizabeth Hardy.

Co-chair Massey provided an overview of the agenda. Co-chair Massey also introduced his guests, Bella Brooks and her father, stating that Ms. Brooks is a student at Lexington Catholic High School and shadowing the co-chairman for the day.

Co-chair Massey introduced and welcomed Representative Flannery, the newest member of the committee.

A motion was made and seconded to approve minutes of the July 7, 2022, meeting. Minutes were approved by voice vote without objection.

Organized Retail Theft

Shannon Stiglitz, Senior Vice President of Government Affairs, Kentucky Retail Foundation, provided a brief overview of the retail industry's impact on Kentucky's economy and expressed concern regarding organized retail crime. Ms. Stiglitz stated that the FBI describes organized retail crime as professional burglars, boosters, cons, thieves,

fences, and resellers conspiring to steal and sell merchandise obtained from retail establishments by theft or deception and proceeded to provide examples from across the country. She reported that according to the Association of Certified Anti-Money Laundering Specialists (ACAMS) the ease and anonymity of selling stolen goods online through third-party marketplace accounts is a factor in the increase in this type of criminal activity.

Ms. Stiglitz reported that 11 states have passed the Integrity, Notification, and Fairness in Online Retail Marketplace for Consumers Act (INFORM Act). The act requires online marketplaces to require “high-volume third-party sellers” to provide verification information to the marketplaces and consumers and requires marketplaces to verify this information. High-volume sellers are identified as those meeting a certain threshold of sales. She reported the benefits of the INFORM Act, including safety of the consumer.

Nicole Toyloy, Regional Director for Walgreens Asset Protection for Tennessee and Kentucky reported increases in product losses attributable to organized retail crime. She stated robberies and threats of violence have become a significant safety and security concern for employees. The products most targeted by the organized retail crime syndicates include over-the-counter medication, teeth whitening supplies, baby formula, and personal care products. The theft rings are not concerned about expiration dates or recommended ways to store items putting the consumer at risk.

Matthew Rosteet, Kroger Asset Protection Manager, testified regarding his experiences stating that now almost anything of value that is within the store has been targeted by organized crime syndicates. He discussed several of the security measures retailers are taking to address this issue. Mr. Rosteet stated that it will take law enforcement, courts, retailers, and legislatures working together to keep this problem at bay.

In response to Senator West, Ms. Stiglitz referenced Kentucky’s current criminal statutes and stated that retailers are trying to ensure that all prosecutors and members of law enforcement know what is available to them under existing law and utilize those laws. In response to a follow-up question from Senator West, Ms. Stiglitz stated that prosecutions are low and both Ms. Stiglitz and Ms. Toyloy expressed concerns about the lack of prosecution of those that are higher level offenders. The INFORM act is a mechanism that will help retailers, law enforcement, and prosecutors identify offenders more quickly.

Chairman Massey stated that criminal justice reform works both ways – to tighten our laws and also lessen the amount of individuals incarcerated and provide treatment options instead. It means that in certain cases we might need to toughen our laws to make sure that people are held accountable.

Senator Carroll discussed issues faced by law enforcement, particularly in areas of Kentucky that border other states and offenders crossed state lines. Responding to a

question from Senator Carroll, Ms. Toyloy stated that most of the incidents occur in Louisville and Lexington and there has been a tremendous spike in these incidents in the last five years.

Representative Cantrell discussed existing statutes and prosecutions in Kentucky and other states. In response to a question from Representative Cantrell, Ms. Stiglitz stated that under the INFORM Act, the marketplace is required to verify the seller's information. While law enforcement and retail groups can see stolen products are being offered for sale, they cannot track who is selling the product. It can be completely anonymous to sell these products and the INFORM Act would change that by requiring information about the seller. Mr. Rosteet added that some marketplaces have cooperated with law enforcement and provide authorization for some tracking services to be utilized in an effort to build a case from the low-level offenders to the larger syndicate.

In response to a question from Representative Cantrell relating to legitimate retailers in the marketplace, Ms. Stiglitz stated that if it is a brick and mortar business, the law requires registration with the Secretary of State and tax identification numbers. While some small businesses may be impacted under the INFORM Act, it is simply requiring that information be provided.

In response to a request from Representative Kulkarni, Ms. Stiglitz agreed to provide additional data from ACAMS.

In response to a request from Representative Massey, Ms. Stiglitz agreed to provide sample legislation regarding this issue.

In response to a question from Senator Schickel, Ms. Stiglitz reported that she had discussed this issue with the Kentucky Chamber of Commerce and noted that the U.S. Chamber is supportive of the INFORM Act at a national level.

In response to a question from Representative Bratcher, Ms. Toyloy stated that she was unsure if the presence of organized retail crime was affecting the opening of new businesses in areas where thefts might be a problem; but the impacts of organized retail theft would be considered when deciding to close a business which is a significant decision.

In response to the question from Representative Bratcher, Mr. Rosteet stated that the level of theft in a particular area is a consideration when determining whether to open a store.

Representative Nemes discussed the fact that organized retail theft is not a victimless crime, noting it is a big problem for retailers. He noted that it is the responsibility of the judges and prosecutors to enforce the laws that have already been enacted by the General Assembly. Representative Nemes discussed current statutes and the punishment

attached to those statutes, stating that while this is a problem that the government needs to obtain control over, in many cases this is already a Class C felony which could result in someone convicted of this conduct going to prison today for about for 10 years.

In response to a question from Representative Flannery, Ms. Stiglitz stated that if the INFORM Act was enacted, the reporting data would be accessible to law enforcement and prosecutors. In response to an additional question from Representative Flannery regarding the threshold amount of the transaction and the number of transactions, Ms. Stiglitz stated that Arkansas, which was enacted the INFORM Act, does not have the “and” requirement of \$5,000 or more and 200 transactions. Arkansas has an “or” requirement. Many states are working with marketplaces and national organizations to get language that is easy for all to administer and still serve the purpose of the Act.

Security and Civil Unrest

Representative Massey stated that many states, including Kentucky, have become more mindful of security in state capitols. Martin Brock, Chief of the North Carolina General Assembly Police Department, provided video clips of several protests that occurred on the grounds of capitols in various states. Chief Brock stated that while the right to protest must be protected and while the security of those involved in the protest must be protected, the security of legislators, legislative staff, and law enforcement must also be protected. Chief Brock reported that several states are considering legislation that would not only protect legislators in state capitols but would also protect legislators from protestors at their homes.

Chief Brock discussed protest management tools and explained the various methods of protests that are being utilized across the country.

In response to a question from Senator Wheeler, Chief Brock stated that 97 percent of protestors advocate peacefully for their positions. Chief Brock further reported, however, that approximately 3 percent of protestors act as agitators designed to cause chaos. Many of these protestors are from locations other than where the protest is occurring.

Senator Carroll commented on the need for security and on the need to structure a response on a non-partisan basis. He complimented Representative Massey for offering this topic for discussion.

Chief Brock recommended that all states have a plan in place to respond to various circumstances that can arise during a protest before being faced with those circumstances to ensure the safety and security of all.

There being no further business the meeting adjourned at 12:39 P.M.