

SESSION OF 2021

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2025

As Amended by House Committee on Federal
and State Affairs

Brief*

HB 2025, as amended, would create law concerning the authority of Kansas Department of Wildlife, Parks and Tourism (Department) and law enforcement agencies to conduct surveillance on private property.

The bill would prohibit Department employees who are authorized to enforce the laws of the State from conducting surveillance on private property unless authorized pursuant to a search warrant under continuing law, the *U.S. Constitution*, or an exception listed by the bill.

The bill would prohibit law enforcement agencies in the State from entering into either formal or informal agreements with an owner or operator of a utility pole to install or have installed a tracking device. The bill would also prohibit law enforcement agencies in the state from conducting surveillance on private property without obtaining a search warrant under continuing law, the *U.S. Constitution*, or an exception listed by the bill.

Exceptions

The bill would list the following exceptions to the search warrant requirement: [*Note*: The following terms are legal terms defined in case law.]

- Exigent circumstances;

*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>

- Consent searches; or
- The Plain View Doctrine.

Definitions

The bill would define the following terms:

- “Surveillance” means either physical or electronic presence on private property, including the use or installation of a tracking device, to monitor activity or collect information related to the enforcement of the laws of the State, including the use or installation of a tracking device;
- “Tracking device” has the same definition as continuing law, which defines the term to mean an electronic or mechanical device that permits a person to remotely determine or track the position or movement of a person or object; it includes, but is not limited to, a device that stores geographic data for subsequent access or analysis and that allows for real-time monitoring of movement; and
- “Utility pole” has the same definition as continuing law, which defines the term to mean a structure owned or operated by a public utility, a municipality, or an electronic cooperative that is designed specifically for and used to carry lines, cables, or wires for telecommunications, cable, electricity, or to provide lighting.

Background

The bill was prefiled for introduction on December 31, 2020, by Representative Corbet.

House Committee on Federal and State Affairs

In the House Committee hearing, Representative Corbet, Senator Tyson, and a representative of the Kansas Justice Institute testified as **proponents** of the bill, stating the bill would help protect property owners' rights. Written-only **proponent** testimony was submitted by Douglas County Public Works, American Civil Liberties Union of Kansas, and Kansas Farm Bureau.

Representatives of the Douglas County Public Works, Kansas Association of Chiefs of Police, Kansas Department of Wildlife, Parks and Tourism, Kansas Peace Officers' Association, Kansas Sheriffs Association, and League of Kansas Municipalities presented **opponent** testimony, stating their concern with the effect the bill would have on enforcement investigations and county weed operations.

Written-only **opponent** testimony was submitted by representatives of the Kansas Bureau of Investigation, Kansas State Lodge Fraternal Order of Police, and the Lenexa Police Department.

Representatives of the Kansas Association of Counties and Kansas Livestock Association submitted neutral testimony. The representative of the Kansas Association of Counties proposed an amendment to remove county weed supervisors from the bill. Written-only neutral testimony was submitted by the Kansas Department of Agriculture.

The House Committee amended the bill to remove the county weed supervisor prohibition from the bill and clarify exceptions to the warrant requirement.

Fiscal Information

According to the fiscal note prepared by the Division of Budget on the bill as introduced, the Kansas Department of Wildlife, Parks and Tourism, Kansas Highway Patrol, and League of Kansas Municipalities state the bill would have no

fiscal effect. The Kansas Association of Counties states it does not know whether surveillance on private property is a widespread issue and therefore the fiscal effect is unknown.

Privacy rights; access and surveillance by government officials; real property