

**Testimony of Kansas Department of Wildlife and Parks
In Opposition to Senate Bill 395
An Act Prohibiting KDWP Certified Law Enforcement Officers from
Entering Private Property Without a Warrant
To
The Senate Committee on Judiciary**

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The Kansas Department of Wildlife and Parks (KDWP) opposes the provisions of Senate Bill 395. SB 395 unduly restricts the otherwise lawful activities of KDWP law enforcement officers. This bill is the counterpart to House Bill 2025 that died on the House Floor last year by failing to receive sufficient votes to advance to final action. **KDWP once again stands in opposition to this legislation and requests this Committee follow the House's action and defeat SB 395.**

SB 395 essentially proposes to prohibit KDWP law enforcement officers from surveilling private property. Surveilling is then defined as being present on private property either physically or electronically. Several exceptions to KDWP officers being prohibited from private property are mentioned in subsection (a), such as when the law enforcement activity is pursuant to a warrant, the United States Constitution, or one of three delineated exceptions to the warrant requirement. Those exceptions include: 1) exigent circumstances; 2) consent searches; or the plain view doctrine. KDWP opposes this bill for a variety of reasons.

- Creates a disadvantage for law enforcement officers to fulfill their duty and a safe harbor for criminals.
- County Sheriffs, KBI, State Highway Patrol, and other statewide law enforcement officers would all have jurisdiction to enforce conservation laws, but KDWP officers who specialize in conservation laws and KDWP regulations would lack jurisdiction. This creates a significant disparity between officers with jurisdiction to enforce KDWP regulations and adds confusion when courts try to interpret SB 395.
- Requires a new standard for the court system to analyze both criminal convictions and wildlife violations. Would evidence observed or obtain by KDWP officers in violation of SB 395 be suppressed by a court and allow a criminal to walk? It is not clear whether the exclusionary rule would apply.

- Jeopardizes general criminal convictions. For criminal cases, the presence of a KDWP officer on private property without a search warrant could prevent the conviction of bad actors.
- Jeopardizes officer safety from other agencies. Many times, especially in more rural areas, KDWP is the only law enforcement agency available to provide backup to local law or other statewide law enforcement agencies, i.e. general backup for a knock-and-talk.
- Impairs Search and Rescue efforts by Game Wardens, K-9 units, aircraft, or watercraft. All KDWP officers would be prohibited from looking for lost or kidnapped individuals or drowning victims on private property, which includes non-navigable waterways, regardless of whether the S&R efforts was potentially connected to criminal activity.
- Drafters of the bill may have confused the legal theories of “exigent circumstances,” which appears in the bill, with the “community caretaker” exception to the warrant requirement. Exigent circumstances is a warrant exception when in an emergency situation involving known or suspected criminal activity. Community caretaker exception would be a traditional welfare check or search and rescue operation.
- Drafters of the bill may have confused the legal theory of the “plain view doctrine,” which appears in the bill, with the “open field doctrine.” These are two totally different warrant exceptions. Plain view typically allows officers to use evidence they observe within a home, car, or building when they are in a location they are authorized to be while investigating criminal activity. The open field doctrine states that criminals do not have a legitimate privacy interest in an open field, empty lot, or other open areas (except next to the home) against law enforcement surveilling or being present in such area.
- Surveilling suspicious activity on public property while the officer is physically located on adjacent private property would be prohibited. This could impair investigations into possible marijuana grows, meth labs, unlawful timber harvest, etc.
- No longer able to conduct night surveillance of spotlighting individuals potentially shooting at big game on private property.
- Impairs KDWP officers’ ability to protect private property from trespass, or other criminal activity. It prohibits the entering onto private property to check for proper licensing, and to verify hunter/anglers have landowner permission. Many landowners are absentee or live many miles away.

As outlined above, the bill will would cause a significant impact to the operations of KDWP law enforcement, as well as jeopardize officer safety and public safety by creating a significant disparity between KDWP officers and other law enforcement agencies. This would have unknown consequences that impact both the courts and the individuals out in the field working to enforce the law.

The Department appreciates the support of the Committee in opposing SB 395 and the opportunity to address the Committee.