

SESSION OF 2022

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 395**

As Amended by Senate Committee of the Whole

**Brief\***

SB 395, as amended, would create law concerning the authority of Kansas Department of Wildlife and Parks (KDWP) to conduct surveillance on private property.

The bill would prohibit KDWP employees who are authorized to enforce the laws of the State from conducting surveillance on private property unless authorized pursuant to a lawfully-issued warrant, court order, or subpoena, the *U.S. Constitution*, or an exception to the search warrant requirement specified by the bill.

The bill would specify that the above prohibition on certain KDWP employees would not apply to any activities of an employee of KDWP when the purpose of the surveillance is to locate and retrieve a missing person.

***Definitions***

The bill would define the following terms:

- “Surveillance” means the installation and use of electronic equipment or devices on private property, including, but not limited to, the installation and use of a tracking device, video camera, or audio recording device, to monitor activity or collect information related to the enforcement of the laws of the State; and

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\*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>

- “Tracking device” would have the same definition as in continuing law in the Kansas Code of Criminal Procedure, 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.

## **Background**

The bill was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Olson.

[*Note:* The bill, as introduced, contains provisions similar to those in 2021 HB 2025, as further amended by the House Committee on Federal and State Affairs.]

## ***Senate Committee on Judiciary***

In the Senate Committee hearing on February 1, 2022, Representative Corbet and representatives of Americans for Prosperity–Kansas and the Kansas Livestock Association provided **proponent** testimony. Proponents stated enactment of the bill is needed to limit the use of a legal doctrine that has upheld warrantless searches of private property not otherwise protected by the *U.S. Constitution*. Written-only proponent testimony was provided by a representative of the Kansas Farm Bureau.

A representative of KDWP provided **opponent** testimony, stating the bill would hinder its agency’s officers’ ability to protect wildlife and private property and would create a disparity in jurisdiction between KDWP officers and other law enforcement officers. Written-only opponent testimony

was provided by a representative of the Kansas State Lodge Fraternal Order of Police. No other testimony was provided.

On February 15, 2022, the Senate Committee amended the bill to clarify the definition of “surveillance,” to further clarify when surveillance may be conducted pursuant to the bill, and to exclude the activities of certain persons from the prohibition on surveillance under the bill.

### ***Senate Committee of the Whole***

On February 22, 2022, the Senate Committee of the Whole amended the bill to remove a provision excluding certain persons from the bill’s prohibitions on surveillance and to clarify when an employee of KDWP may conduct surveillance on private property.

### **Fiscal Information**

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, KDWP states enactment of the bill would have no fiscal effect.

Privacy; real property; surveillance; Kansas Department of Wildlife and Parks; warrants