



Kansas Sheriffs' Association

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Testimony to the House Committee on Federal and State Affairs Opponent to HB 2025 February 4, 2021

Chairman Barker and Committee Members,

The Kansas Sheriff's Association submits testimony as an opponent to HB2025.

The bill itself as written is very confusing. Both sections of the bill have identical provisions in subsection (b). The "surveillance" definition includes, "either physical or electronic presence on private property."

- We are unclear as to the purpose of this language. Does this mean the actual electronic device or is it what can be seen on the device or if a LEO is standing private property and can observe another property?

Under the current definition of KSA 22-2502 (f) (4) a "tracking device" means an electronic or mechanical device that permits a person to remotely determine or track the position or movement of a person or object. "Tracking device" includes, but is not limited to, a device that stores geographic data for subsequent access or analysis and a device that allows for the real-time monitoring of movement.

The KSA does not believe when this statute was passed that this definition included cameras. A tracking device is much different than a stationary camera. Currently, a search warrant is required to place a "tracking device" on a moving object, such as a vehicle. Law enforcement is not required to obtain a search warrant to place a camera on private property, with permission of the owner, to monitor illegal activities of another.

Section 2 of the bill applies to any law enforcement agency in the state. This section prohibits law enforcement to "enter into an agreement, whether informal or formal, with an owner or operator of a utility pole to install or have installed a tracking device to conduct surveillance on private property, unless authorized pursuant to a warrant." Again, this is very vague. A tracking device is something that is used on a moving object not a stationary pole. KSA interprets this sentence to pertain to a camera. Most telephone, cable TV, electrical etc. poles are on public right away and owned by a company. The current practice is to ask for permission to place a camera on the pole to conduct surveillance, a search warrant is not required because we are given permission from the owner of the property (pole).

Section 2 also includes the limitation of conducting surveillance “on private property.” KSA finds this to be unclear. Does this mean the device being on private property or does it mean any private property that can be seen in the video?

Needless to say we believe the spirit of this bill is to limit the abilities of a law enforcement agency in conducting surveillance that is criminal in nature. The bill appears to limit any type of surveillance without a warrant. KSA is aware of numerous incidents where a neighbor is reporting criminal activity taking place at a neighbor’s residence. The complaining party has asked a LEO agency if we want to surveil the residence from their house or has asked us if we wanted to place a camera on their property to surveil the residence in question. We believe this bill as written would prevent this from happening.

Law enforcement uses a variety of surveillance techniques including sitting in a car and observing the property in question to mounting cameras, either through a search warrant or from permission of the property owner. Most generally it is by asking permission of the property owner. Does this bill prevent law enforcement from sitting in a car on private property, with permission, and observing a suspect’s property?

Lastly, surveillance is used in a variety of cases not just drug investigations. Surveillance has been a key factor in providing credible evidence in homicide, robbery, human trafficking investigations along with a variety of other criminal investigations.

The Kansas Sheriff’s Association is an opponent of this bill due to the vagueness of how the bill is written as well as clearly established case law that allows cameras being used for surveillance purposes without a warrant. We thank you for your consideration and the opportunity to provide testimony on this bill.

Jeff Easter, Sedgwick County Sheriff
Legislative Committee Chair