

SESSION OF 2011

**SUPPLEMENTAL NOTE ON HOUSE
SUBSTITUTE FOR SENATE BILL NO. 55**

As Recommended by House Committee on
Corrections and Juvenile Justice

Brief*

House Sub. for SB 55 would amend the statute governing issuance of search warrants to allow a magistrate to issue a search warrant for seizure of: information concerning the user of an electronic communication service; information concerning the location of electronic communication systems; or any other information made through an electronic communication system. The bill would clarify that jurisdiction under this provision extends to information held by entities registered to do business in Kansas or to entities outside Kansas that are located in jurisdictions recognizing the authority of the magistrate to issue the search warrant. "Electronic communication service" and "electronic communication system" are given the same meaning as defined in KSA 22-2514.

The bill would amend the statute governing application for orders authorizing interception of a wire, oral or electronic communication to clarify that a judge may direct a provider of electronic communication service, regardless of the location or principle place of business of such provider, to furnish information, facilities, and assistance to an applicant seeking to intercept communications by a person served by the provider.

The bill would clarify that the sections containing the above provisions shall not be construed to require a search warrant for cellular location information in an emergency situation pursuant to KSA 22-4615.

*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>

The bill also would amend the crime of harassment by telecommunications device to include the use of a telecommunications device to transmit an obscene, lewd, lascivious, or indecent image or text. The bill would make it illegal to use a telecommunications device to transmit any comment, request, suggestion, proposal, image, or text with intent to abuse, threaten, or harass any person at the receiving end.

Additionally, the bill would define “telecommunications device” to include telephones, cellular telephones, telefacsimile machines and any other electronic device which uses an electronic communication service. The bill would remove the word “filthy” from the description of proscribed communication content and clarify that a person charged under this section also may be charged with and convicted of indecent solicitation of a child, electronic solicitation, sexual exploitation of a child, or promoting obscenity. Finally, the bill would make several technical amendments to ensure consistency.

Background

Senator Tom Holland requested the Senate Judiciary Committee introduce SB 55. As introduced, the bill contained the provisions regarding the crime of harassment by telecommunications device.

In the Senate Judiciary Committee, Senator Holland and representatives of the Bonner Springs Police Department, the Kansas Association of Chiefs of Police, and the Kansas Peace Officers Association appeared in support of SB 55. The proponents explained the current language of the statute makes it difficult to charge individuals who send harassing or threatening text messages. The conferees also stated the statutory language needs to be updated to include the full range of telecommunication devices that are now available. No opponents provided testimony.

The Senate Committee amended the bill to remove the word “filthy,” clarify the proposed definition of “telecommunications device,” include a provision regarding other crimes with which an offender may be charged, and restore language prohibiting the making of calls with intent to abuse or harass, whether or not conversation ensues. The Committee recommended the bill be passed as amended.

In the House Committee on Corrections and Juvenile Justice, representatives of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Association of School Boards testified in support of SB 55. The Association of Community Mental Health Centers of Kansas and the Kansas County and District Attorneys Association provided written testimony supporting the bill.

The House Committee recommended a substitute bill for SB 55 that included the provisions of SB 55 as well as modified language drawn from HB 2217 regarding search warrants for electronic communications and orders authorizing interception of electronic communication. HB 2217 had been introduced by Representative Tom Sloan at the request of a detective from the Lawrence Police Department. The detective testified in support of HB 2217 at the House Committee’s hearing on the bill.

The fiscal note on SB 55, as introduced, stated the bill would have no fiscal effect. The fiscal note on HB 2217, as introduced, stated the bill had the potential to increase search warrant requests and evidence introduced as a result of the warrant. The Office of Judicial Administration indicated that passage of HB 2217 would have a negligible fiscal effect that could be absorbed within the Judiciary’s existing budget. There is no fiscal note for the substitute bill.