

SESSION OF 2013

**CONFERENCE COMMITTEE REPORT BRIEF
SUBSTITUTE FOR HOUSE BILL NO. 2017**

As Agreed to April 3, 2013

Brief*

Sub. for HB 2017 would amend provisions of the Kansas Code of Criminal Procedure concerning appeals of municipal court and district magistrate judgments, search warrants, and reporting of pornographic materials seized or documented as evidence.

Municipal Court and District Magistrate Judgments

The bill would amend the law concerning appeals to the district court of municipal court judgments and judgments of a district magistrate judge to provide that these appeals could be filed only after the sentence has been imposed. Further, the bill would provide no appeal could be taken more than 14 days after the sentence is imposed.

Search Warrants

Currently, all search warrants must be supported by facts sufficient to show probable cause that a crime has been or is being committed. The bill would allow for a warrant to be issued based on probable cause that a crime is about to be committed and would make other technical amendments applicable to all search warrants. Further, the bill would add language specific to search warrants for tracking devices,

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allowing a magistrate to issue a search warrant for the installation, maintenance, and use of a tracking device. The warrant would authorize use of the device to track and collect tracking data relating to a person or property for a specified time period, but no more than 30 days from installation. The bill defines “tracking device” and “tracking data.”

For good cause shown, the warrant could authorize retrieval of tracking data recorded during the specified time period within a reasonable time after the warrant expires, and the magistrate could authorize one or more extensions of the warrant of no more than 30 days each. The bill provides warrants for tracking devices would be valid during the specified time period, regardless of whether the subject person or property leaves the issuing jurisdiction, and, if issued by a district judge, may be executed anywhere in the state.

The bill would require the law enforcement officer executing a warrant for a tracking device to complete installation within 15 days from the date it is issued and to record on the warrant the exact date and time the device was installed and the entire period during which it was used. The bill also would require the deactivation and removal of the device as soon as practicable after the warrant expires. If removal is not possible, the bill would require deactivation and an explanation on the search warrant return of why removal was not completed. Reactivation would be prohibited without an additional warrant or extension of the original warrant, and a deactivated tracking device could be accessed after the expiration of the warrant only for the purpose of collecting or retrieving tracking data obtained during the specified time period.

Affidavits or sworn testimony in support of a search warrant for a tracking device would not be available for examination without a written court order unless requested by the defendant or the defendant’s counsel. Additionally, the warrants would be sealed by the court and no copy left or served except as discovery in a criminal prosecution.

Reporting of Pornographic Materials Seized or Documented as Evidence

The bill would create a new section of law requiring the Kansas Bureau of Investigation (KBI) to work with the Attorney General and state and local law enforcement to develop a data reporting process enabling at least an annual report of the number of sexually violent crimes reported and the number of such crimes where pornographic materials are seized or documented as evidence. The report would be used solely for statistical purposes. The bill would require this process to be in place within one year of the implementation of a capable central repository. Upon the implementation of a capable central repository, the KBI would be required to make the necessary changes to the Kansas Standard Offense Report and the Kansas Incident Based Reporting System (KIBRS) Handbook and to promulgate rules and regulations concerning training of law enforcement to implement these provisions. The bill would provide that it cannot be construed to expand the scope of an officer's search. The bill also would define "nudity," "pornographic materials," "sexually explicit conduct," and "sexually violent crime."

Conference Committee Action

The Conference Committee agreed to the Senate amendments and agreed to add the contents of SB 92, as amended by the House Corrections and Juvenile Justice Committee.

Background

HB 2017 would have added language to provide that a person convicted of a right-of-way traffic violation that results in a vehicle accident or collision resulting in serious bodily injury or death would be guilty of an unclassified misdemeanor. The bill also would have given victims and the families of victims of such accidents rights to notice, to make

a victim impact statement, and to receive restitution. Further, the bill would have clarified the procedure for appeals of municipal court actions to the district court.

In the House Judiciary Committee, a representative of the Department of Revenue Division of Vehicles appeared to address the potential fiscal impact of the bill. Concerned citizens also appeared to offer their support for the bill. A subcommittee was formed for further study and agreed to recommend maintaining the sections concerning appeals of municipal court decisions, adding a section concerning appeals of district magistrate judge decisions, and striking the remaining sections. The House Committee agreed to adopt the subcommittee's recommendations as a substitute bill.

No proponents or opponents offered testimony in the Senate Judiciary Committee. The Senate Committee amended the bill to include the contents of HB 2034.

The Division of the Budget's fiscal note for the bill, as introduced, does not address the changes made by the substitute bill.

HB 2034. In the House Corrections and Juvenile Justice Committee, representatives of the KBI, American Civil Liberties Union of Kansas and Western Missouri, Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and Kansas Peace Officers Association offered testimony in support of the bill. No others offered testimony. The House Committee agreed to remove the requirement that installation, maintenance, and use of a tracking device be "covert."

In the Senate Judiciary Committee, a representative of the Lawrence Police Department and representatives of the KBI, Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and Kansas Peace Officers Association offered testimony in support of the bill. Representative Tom Sloan also appeared before the Committee and requested an amendment to require sellers to record a name and address

of a person buying a pre-paid mobile device or SIM card, as well as unique device identification information. No opponents offered testimony on the bill.

The fiscal note for the bill, as introduced, indicates passage would have no effect on state or local governments. While passage may increase the number of requests for search warrants filed in district courts and, consequently, the time spent by district court, judicial, and non-judicial staff on those cases, a precise estimate of the effect cannot be given.

SB 92. As introduced, the bill would have required law enforcement, when an adult is arrested or charged with commission or attempted commission of a sexually violent crime on and after January 1, 2014, to report on the Kansas Standard Offense Report the presence of pornographic materials found at the scene of the crime, on the person arrested, at the arrested person's residence, and in the arrested person's vehicle.

In the Senate Judiciary Committee, Senator Greg Smith, who requested introduction of the bill, and a representative of the American Family Association of Kansas and Missouri testified in support of the bill. Written proponent testimony was submitted by a psychiatry professor and by a criminology professor. There was no opponent testimony.

In the House Corrections and Juvenile Justice Committee, the same proponents testified and submitted written testimony. The Johnson County Sheriff testified as a neutral conferee on behalf of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association. There was no opponent testimony.

The House Committee amended the bill by replacing the reporting requirement with the provision requiring the KBI to work with the Attorney General and law enforcement to develop a reporting process, modifying the definition of "pornographic materials," adding definitions of "nudity" and

“sexually explicit conduct,” and making the provisions of the bill contingent on the implementation of a capable central repository system and appropriations.

The fiscal note prepared by the Division of the Budget on the bill, as introduced, indicates the KBI would have to construct a new KIBRS repository to comply with the bill, requiring \$325,000 from the State General Fund in FY 2014 for designs, development, and printing. The agency would require \$415,000 from the State General Fund in FY 2015 for the new repository for continued development, testing and training, and data migration.

The League of Kansas Municipalities indicates the bill, as introduced, would require additional law enforcement time and additional legal and staff time to make additional searches and obtain warrants, but the League is unable to quantify the actual fiscal effect of the bill. The bill would have no fiscal effect on the Judicial Branch or on Kansas counties. Any fiscal effect associated with the bill is not reflected in *The FY 2014 Governor’s Budget Report*.

Criminal procedure; appeals of municipal court and district magistrate judgments; search warrants; reporting of pornographic materials seized or documented as evidence; KBI

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