

SESSION OF 2013

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR HOUSE
BILL NO. 2017**

As Amended by Senate Committee on Judiciary

Brief*

Sub. for HB 2017 would amend provisions of the Kansas Code of Criminal Procedure concerning appeals of municipal court and district magistrate judgments, in addition to provisions governing search warrants.

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, allowing magistrates 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

*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 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.

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 Committee on Judiciary, 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 Committee on Judiciary.

The Senate Committee amended the bill to include the contents of HB 2034.

HB 2034

In the House Committee on Corrections and Juvenile Justice, representatives of the Kansas Bureau of Investigation (KBI), ACLU 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 Committee agreed to remove the requirement that installation, maintenance, and use of a tracking device be

“covert.”

In the Senate Committee on Judiciary, 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 Division of the Budget’s fiscal note for HB 2017, as introduced, does not address the changes made by the substitute bill.

The fiscal note for HB 2034, 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.