

**TESTIMONY IN OPPOSITION OF HB2025 – AN ACT concerning privacy rights, relating to real property, imposing restrictions on access and surveillance by certain governmental officials and agencies.**

To: Committee on Federal and State Affairs

From: Dawn Layman, Chief of Police  
City of Lenexa

Date: February 2, 2021

Honorable Chairman and members of the on the Committee on Federal and State Affairs, the Lenexa Police Department thanks you for the opportunity to provide testimony in opposition of HB2025.

The Lenexa Police Department has been utilizing cameras on “utility” poles in different applications for at least the last 27 years – since I have been employed here. As technology has grown so has our use. We use this technology on a daily basis to apprehend criminals, reconstruct accidents and more importantly we use it as a tool to protect the lives of our officers and the citizens of our community. Multiple law enforcement agencies across the state would be adversely affected by this legislation.

We believe there are provisions within HB 2025 which impede, and at times may prohibit, the ability of law enforcement to perform investigations, or other public safety duties; and HB 2025 has other adverse consequences, such as impeding the ability of Codes Officers, Fire Prevention Officers and Building Officials, to investigate and record municipal code violations.

Although Section 1 of HB 2025 applies only to the law enforcement arm of the Kansas Department of Wildlife, Parks and Tourism, and to county weed supervisors (K.S.A. 2-1316), it seems this section contradicts long standing legal case law distinguishing restrictions for government intrusions onto the curtilage portions of private property; vis a vie, the non-curtilage portions of property. Section 1 prohibits surveillance on private property without a warrant, unless constitutionally allowed, or under a recognized exception to the warrant requirement.

Section 1, as written, expands protected areas contrary to the case law interpreting the Fourth Amendment to the United States Constitution and the Kansas Constitution, Sec 15. In *Katz v. U.S.*, 389 U.S. 347 (1967), the United States Supreme Court stated, “what a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection”. Accordingly, there are a plethora of legal cases, dating

back to *Hester v. U.S.*, 265 U.S. 57 (1924), which allow for plain view observations by governmental officials of any property from a public vantage point, including aerial views. The City is happy to provide further case law analysis if so requested; but any privacy concerns for which it is believed HB 2025 will address, have already been adequately addressed in numerous State and Federal legal cases.

Although, county weed supervisors, or Kansas Wildlife officers may have little enforcement opportunities within the City, when assistance is needed, or if an investigation is occurring within our city limits, it is important that such governmental officials can investigate potential criminal or code violation activities pursuant to constitutional dictates.

As with any legislation, there is a concern of the unintended consequences of this section, as well as a concern that in the future there may be attempts to expand this Section to include other governmental officials.

Many of the same concerns concerning constitutional allowances noted in Section 1, also pertain to Section 2 of HB 2025. As well, some of the concerns noted within the Section 2 discussion (below), may also apply to Section 1, including, but not limited to, the concerns raised about subsection (b) of HB 2025.

Section 2 pertains to law enforcement and prohibits the installation of a tracking device to conduct surveillance on private property without a warrant, or under a recognized exception to the search warrant requirement, or as allowed by the United States Constitution. While not prohibiting surveillance per se, the term “installation” is for the purpose of conducting surveillance from a public vantage point onto private property.

In subsection (b) of Sections 1 and 2 are the definitions of surveillance and tracking device. The definitions mirror each other. Section 2 also contains the definition of utility pole. We believe the definitions and Bill, as written, are problematic and could lead to an interpretation which interferes with, or prohibits lawful police investigations.

Surveillance includes “either a physical or electronic presence on private property”. It is unclear what ‘electronic presence’ means as this term is undefined and seems very vague. For instance, does this mean a remote presence or otherwise.

Tracking device, as taken from K.S.A. 22-2502, means an electronic or mechanical device that permits a person to remotely determine or track the position or movement of a person or object. A 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 real time monitoring of movement.

The plain language of 'tracking device' is concerning as it seems it can describe the function of a simple video recorder, or camera. These definitions as written will interfere with or prohibit useful and lawful police investigative tools.

Utility poles, as taken from K.S.A. 66-2019, means a structure owned or operated by a public utility as defined in K.S.A. 66-104, a municipality as defined in K.S.A. 75-6102, or an electric cooperative as defined in K.S.A. 2020 Supp. 17-4652, that is designed specifically for and used to carry lines, cables or wires for telecommunications, cable, electricity or to provide lighting. K.S.A. 66-104 (b) provides, that a "public utility" shall also include that portion of every municipally owned or operated electric or gas utility located in an area outside of and more than three miles from the corporate limits of such municipality... Based on this definition a "utility pole" could be interpreted to include poles carrying telephone, cable tv, internet service or electrical, street lighting, security lighting, or traffic control lighting.

The City of Lenexa Police Department along with many other law enforcement agencies throughout the State, use live feed pan/tilt/zoom (PTZ) traffic cameras every day to monitor traffic; to assist with investigations and accident reconstructions, to solve crimes, and to protect our officers and citizens. If an officer is on a traffic stop in view of one of our cameras – our dispatchers monitor the interaction as it is occurring. Many times in these situations our dispatchers have been able to call for assistance for the officer before they are able to call for help themselves.

These cameras in conjunction with human intervention can monitor movements of persons and objects, and many are attached to utility poles. As well, sometimes in investigating criminal cases, including serious cases involving drug distribution, police may install pole cameras on utility poles to track movements of suspects. The definitions and wording of HB 2025 appear to prohibit such use. Such prohibition causes harm to investigations, prevents police access to information that could solve crimes, interferes with the ability of police to reconstruct accidents (minor to fatality), and causes a great officer safety concern.

Section 2 of the bill also prohibits law enforcement from entering into an agreement, whether informal or formal, with an owner or operator of a "utility pole" to install or have installed a tracking device. Any device falling under the definition of tracking device would not be allowed to be placed on a utility pole, even though to do so now is lawful and within constitutional boundaries. So, for instance, a camera could not be installed on a utility pole.

Other concerns mentioned include, that the location of a utility pole, with respect to being on public or private property, is not addressed in the bill; and that a City's Traffic

Engineering Department, even though not a law enforcement agency, might lose access to PTZ cameras which are allowed to be used by a Traffic Engineering Department to monitor traffic patterns and crash data to improve traffic safety.

All in all, we have serious concerns on the deleterious effect this bill would have on current lawful police practices to investigate and solve crimes. Literally, this bill would require a search warrant for even a traffic camera, or require consent of the owner of property under surveillance (who is suspected of criminal conduct) absent any other Fourth Amendment exception. Codes Officers, Building Officials and Fire Prevention Officers could be prohibited from using videos to substantiate code or fire violations, even when doing so from public property. And, as previously stated, this Bill is in direct opposition to the long held constitutional standard that law enforcement can view any property or object in public view. For the reasons stated herein, we are opposed to HB 2025.

Thank you for your time and if you have questions, please do not hesitate to contact me.