*SESSION OF 2022*

# CONFERENCE COMMITTEE REPORT BRIEF
# HOUSE BILL NO. 2299

As Agreed to March 30, 2022

## Brief*

HB 2299 would create and amend law related to fingerprinting for criminal history record checks, surveillance by Kansas Department of Wildlife and Parks employees, jurisdiction of law enforcement officers, the time period within which a search warrant must be executed, and disclosure of information to law enforcement agencies regarding a child alleged or adjudicated to be a child in need of care (CINC).

### *Fingerprinting for Criminal History Record Check—Rap Back Programs*

The bill would create law requiring an applicant, employee, or volunteer subject to a criminal history record check to provide to the requesting authorized entity written consent to obtain such person's fingerprints to conduct a criminal history record check and participate in the Rap Back Program for the purpose of determining suitability or fitness for a permit, license, employment, or volunteer service.

[*Note*: As defined by the bill, "authorized entity" would mean an agency or entity with authorization under state or federal law to conduct a fingerprint-based criminal history record check, and "rap back" would mean the state or federal system that enables an authorized entity to receive ongoing notifications of criminal history record updates for individuals whose fingerprints are enrolled.]

The bill would require an authorized entity to notify each such person that fingerprints shall be retained by the Kansas Bureau of Investigation (KBI) and the Federal Bureau of Investigation for all current and future purposes and uses authorized for fingerprint submission and when fingerprints will be enrolled in the Rap Back Program.

The bill would require fingerprints and related records obtained by the KBI for a fingerprint-based criminal history record check to be searched against known criminal fingerprints to determine if a criminal history record exists and against latent fingerprints entered into the unsolved latent fingerprint file.

The bill would specify a criminal history record check could only be completed for the purpose for which the check was requested and would require submission of a new set of

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at http://www.kslegislature.org/klrd

fingerprints for any additional record checks. An authorized entity enrolled in the Rap Back Program would be required to immediately notify the KBI when the entity is no longer entitled to receive criminal history record information relating to a particular person enrolled in the Rap Back Program. The KBI would be required to cancel such enrollment, and updates to criminal history record information would no longer be provided to such entity.

The bill would limit availability of fingerprints and records relating to fingerprints acquired by the KBI to only the authorized entities entitled to obtain the information and would prohibit KBI employees from disclosing any records of or related to fingerprints acquired in the performance of duties under the bill to any person not authorized to receive the information pursuant to state or federal law. The bill would prohibit a person acquiring the records of or relating to fingerprints, or any information concerning any individual, from disclosing such information to any person who is not authorized to receive such information, and any intentional disclosure of such information would be a class A nonperson misdemeanor.

In addition to "authorized entity" and "rap back," the bill also would define "criminal history record check."

***Surveillance by Kansas Department of Wildlife and Parks Employees***

The bill would create law concerning the authority of Kansas Department of Wildlife and Parks (KDWP) to conduct surveillance on private property.

The bill would prohibit KDWP employees who are authorized to enforce the laws of the State from conducting surveillance on private property unless authorized pursuant to a lawfully issued warrant, court order, or subpoena, the U.S. Constitution, or an exception to the search warrant requirement specified by the bill.

The bill would specify that the above prohibition on certain KDWP employees would not apply to any activities of an employee of KDWP when the purpose of the surveillance is to locate and retrieve a missing person.

*Definitions*

The bill would define the following terms:

- "Surveillance" would mean the installation and use of electronic equipment or devices on private property, including, but not limited to, the installation and use of a tracking device, video camera, or audio recording device, to monitor activity or collect information related to the enforcement of the laws of the State; and

- "Tracking device" would have the same definition as in continuing law in the Kansas Code of Criminal Procedure, which defines the term to mean an electronic or mechanical device that permits a person to remotely determine or track the position or movement of a person or object; it includes, but is not limited to, a device that stores geographic data for subsequent access or analysis and that allows for real-time monitoring of movement.

***Jurisdiction of Law Enforcement Officers***

The bill would amend law regarding the jurisdiction and powers of law enforcement officers, as follows.

*Powers and Authority of Law Enforcement Officers Without Statewide Jurisdiction*

The bill would amend a statute governing jurisdiction of various law enforcement officers to provide a new subsection consolidating and clarifying the ability of law enforcement officers who do not otherwise have statewide jurisdiction to exercise the powers and authority of law enforcement officers anywhere when:

- A request for assistance has been made by law enforcement officers from the area for which assistance is requested;
- In fresh pursuit of a person;
- Transporting persons in custody to an appropriate facility, wherever such facility may be located; and
- Investigating a crime that occurred within the law enforcement officer's jurisdiction, with appropriate notification to and coordination with a local law enforcement agency with jurisdiction where the investigation is to be conducted.

The bill would make conforming technical amendments to reflect the reorganization of the section. The bill also would amend a statute governing school security officers and campus police officers to remove redundant language regarding the powers and authority of campus police officers that would be included in the new subsection added by the bill.

*Powers and Authority of Law Reinforcement Officers Outside Their Jurisdiction*

In addition to the authority described above, the bill would provide that law enforcement officers may exercise the powers and authority of law enforcement officers when outside their statutory jurisdiction when an activity is observed leading the officer to reasonably suspect a person is committing, has committed, or is about to commit a crime and reasonably believe that a person is in imminent danger of death or bodily injury without immediate action, subject to conditions specified by the bill.

***Search Warrant Time Limitations***

The bill would amend the Code of Criminal Procedure to extend, from 96 hours to 240 hours, the time period within which a search warrant must be executed after it is issued.

***Disclosure of CINC Information to Law Enforcement Agencies***

The bill would amend a law governing access, exchange, and disclosure of information in the Revised Kansas Code for Care of Children to require the Secretary for Children and

Families to disclose confidential agency records of a child alleged or adjudicated to be a child in need of care to the law enforcement agency investigating the alleged or substantiated report or investigation of abuse or neglect, regardless of the disposition of such report or investigation.

The bill would require the records to include, but not be limited to:

- Any information regarding such report or investigation;
- Records of past reports or investigations concerning such child and such child's siblings and the perpetrator or alleged perpetrator; and
- The name and contact information of the reporter or persons alleging abuse or neglect and case managers, investigators, or contracting agency employees assigned to or investigating such report.

The bill would state that such records shall only be used for the purposes of investigating the alleged or substantiated report or investigation of abuse or neglect.

The bill would clarify that a law enforcement agency investigating or receiving a report of a child who is alleged or adjudicated to be in need of care would be able to freely exchange information and the above-described records with persons or entities specified in continuing law.

The bill also would add an investigating law enforcement agency to the lists of persons or entities with access to the official and social files of a CINC proceeding.

### *Technical Amendments*

The bill also would make technical amendments to ensure consistency in statutory references and phrasing.

## Conference Committee Action

The Conference Committee agreed to the House version of HB 2299, regarding search warrant time limitations, and agreed to remove the Senate Committee amendment changing the effective date. The Conference Committee further agreed to add the contents of:

- SB 2508, as amended by Senate Committee of the Whole, regarding fingerprinting and Rap Back programs;
- SB 395, as amended by Senate Committee of the Whole, regarding surveillance by KDWP employees;
- SB 435, as passed by the Senate, regarding jurisdiction of law enforcement officers, with an amendment to clarify the jurisdiction of law enforcement officers outside their jurisdiction; and
- HB 2582, as further amended by House Committee, regarding disclosure of CINC information to law enforcement agencies, and removing the Senate Committee amendment to the effective date.

## Background

### *HB 2299 (Search Warrant Time Limitations)*

HB 2299 was introduced by the House Committee on Judiciary at the request of Representative Resman.

*House Committee on Judiciary*

The House Committee on Judiciary held hearings on the bill on February 15, 2021, and January 20, 2022.

In the 2021 House Committee hearing, Representative Resman, a representative of the Johnson County Sheriff's Office, and a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association (law enforcement organizations) testified as **proponents**, stating the bill would bring the time allowed for execution of a search warrant in line with the standard of many other states and would increase safety for law enforcement and the public. A representative of the League of Kansas Municipalities (LKM) submitted written-only proponent testimony. No other testimony was submitted.

In the 2022 House Committee hearing, a representative of the law enforcement organizations again testified as a **proponent**, and a representative of LKM again submitted written-only proponent testimony. No other testimony was provided.

*House Committee of the Whole*

On February 22, 2022, the House Committee of the Whole amended the bill to update statutory references and to change the time period from 10 days to 240 hours. [*Note*: The Conference Committee retained these amendments.]

*Senate Committee on Judiciary*

In the Senate Committee hearing on March 17, 2022, Representative Resman, a representative of law enforcement organizations, and a representative of the Johnson County Sheriff's Office testified as **proponents** on the bill. Written-only proponent testimony was submitted by a representative of LKM. No other testimony was provided.

On March 18, 2022, the Senate Committee amended the bill to make it effective upon publication in the *Kansas Register*. [*Note*: The Conference Committee did not retain this amendment.]

### *HB 2508 (Fingerprinting and Rap Back Programs)*

HB 2508 was introduced by the House Committee on Judiciary at the request of Representative Patton on behalf of the KBI.

*House Committee on Judiciary*

In the House Committee hearing on February 3, 2022, a representative of the KBI testified as a **proponent** of the bill, stating the bill would clarify and codify requirements for participation in and usage of the state and federal Rap Back programs. No other testimony was provided.

*Senate Committee on Judiciary*

In the Senate Committee hearing on March 10, 2022, the same conferee provided **proponent** testimony as in the House Committee hearing. No other testimony was provided.

*Senate Committee of the Whole*

On March 17, 2022, the Senate Committee of the Whole amended the bill to make intentional disclosure of the records of fingerprints, records relating to fingerprints, or any information concerning any individual a class A nonperson misdemeanor. [*Note*: The Conference Committee retained this amendment.]

***SB 395 (Surveillance by KDWP Employees)***

SB 395 was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Olson.

[*Note:* The bill, as introduced, contained provisions similar to those in 2021 HB 2025, as further amended by the House Committee on Federal and State Affairs.]

*Senate Committee on Judiciary*

In the Senate Committee hearing on February 1, 2022, Representative Corbet and representatives of Americans for Prosperity–Kansas and the Kansas Livestock Association provided **proponent** testimony. Proponents stated enactment of the bill is needed to limit the use of a legal doctrine that has upheld warrantless searches of private property not otherwise protected by the *U.S. Constitution*. Written-only proponent testimony was provided by a representative of the Kansas Farm Bureau.

A representative of KDWP provided **opponent** testimony, stating the bill would hinder its agency's officers' ability to protect wildlife and private property and would create a disparity in jurisdiction between KDWP officers and other law enforcement officers. Written-only opponent testimony was provided by a representative of the Kansas State Lodge Fraternal Order of Police. No other testimony was provided.

On February 15, 2022, the Senate Committee amended the bill to clarify the definition of "surveillance," to further clarify when surveillance may be be conducted pursuant to the bill, and to exclude the activities of certain persons from the prohibition on surveillance under the bill. [*Note*: The Conference Committee retained these amendments.]

*Senate Committee of the Whole*

On February 22, 2022, the Senate Committee of the Whole amended the bill to remove a provision excluding certain persons from the bill's prohibitions on surveillance and to clarify when an employee of KDWP may conduct surveillance on private property. [*Note*: The Conference Committee retained these amendments.]

*House Committee on Judiciary*

In the House Committee hearing on March 7, 2022, the same **proponents** testified as in the Senate Committee hearing. A representative of Kansas Farm Bureau and the Kansas Justice Institute provided written-only proponent testimony.

The Secretary of Wildlife and Parks testified as a neutral conferee. No other testimony was provided.

***SB 435 (Jurisdiction of Law Enforcement Officers)***

SB 435 was introduced by the Senate Committee on Judiciary at the request of a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association.

*Senate Committee on Judiciary*

In the Senate Committee hearing on February 9, 2022, the representative described above and a representative of the Blue Valley Campus Police Department testified as **proponents** of the bill, stating the current general jurisdiction statute for law enforcement officers contains several gaps and inconsistencies, and greater clarity is needed for officers to effectively respond to emergencies. Written-only proponent testimony was provided by representatives of the Johnson County Sheriff's Office and the League of Kansas Municipalities. No other testimony was provided.

*House Committee on Judiciary*

In the House Committee hearing on March 8, 2022, the same **proponents** testified as in the House Committee hearing. No other testimony was provided.

***HB 2582 (Disclosure of CINC Information to Law Enforcement Agencies)***

The bill was introduced by the House Committee on Children and Seniors at the request of Representative Concannon.

*House Committee on Children and Seniors*

In the House Committee on Children and Seniors hearing on February 9, 2022, the Secretary for Children and Families and a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association and a representative of the Kansas Police Officers Association provided **proponent** testimony. The proponents stated the bill would address the information gap between law enforcement investigators and the Kansas Department for Children and Families (DCF).

Written-only proponent testimony was provided by two representatives of the Kansas County and District Attorneys Association.

No other testimony was provided.

The House Committee on Children and Seniors amended the bill to add to the list of information the Secretary for Children and Families must disclose the name and contact information of the reporter or persons alleging abuse or neglect and case managers, investigators, or contracting agency employees assigned to or investigating a report of abuse or neglect. [*Note*: This amendment was retained by the Conference Committee.]

On February 23, 2022, the bill was referred to the House Committee on Appropriations. On March 1, 2022, the bill was referred to the House Committee on Judiciary.

*House Committee on Judiciary*

In the House Committee on Judiciary hearing on March 3, 2022, the same conferees provided **proponent** and written-only proponent testimony as in the previous hearing.

On March 7, 2022, the House Committee on Judiciary amended the bill to clarify that records disclosed to an investigating law enforcement agency may only be used for the purposes of the investigation. [*Note*: This amendment was retained by the Conference Committee.]

*Senate Committee on Public Health and Welfare*

The Senate Committee did not hold a hearing on the bill but held a hearing on the companion bill, SB 425, on February 15, 2022.

On March 23, 2022, the Senate Committee amended the bill to make it effective upon publication in the *Kansas Register*. [*Note*: This amendment was not retained by the Conference Committee.]

## Fiscal Information

### *HB 2299 (Search Warrant Time Limitations)*

According to the fiscal note prepared by the Division of the Budget in 2021 on HB 2299 as introduced, the Office of Judicial Administration indicates enactment of the bill would have a negligible effect on Judicial Branch operations, and the Kansas Association of Counties indicates enactment of the bill could create additional costs if a county must continually monitor a location.

### *HB 2508 (Fingerprinting and Rap Back Programs)*

According to the fiscal note prepared by the Division of the Budget on HB 2508, as introduced, the KBI states enactment of the bill would not have a fiscal effect because it currently conducts such record checks at the state level but not at the federal level. The federal level process would not be implemented until a new information system is fully implemented in FY 2024, and there is no charge for participation in the federal Rap Back Program.

### *SB 395 (Surveillance by KDWP Employees)*

According to the fiscal note prepared by the Division of the Budget on SB 395, as introduced, KDWP states enactment of the bill would have no fiscal effect.

### *SB 435 (Jurisdiction of Law Enforcement Officers)*

According to the fiscal note prepared by the Division of the Budget on SB 435, the Kansas Association of Counties states enactment of the bill could reduce county first responder expenditures because the bill would allow for intervention in an incident at an earlier stage instead of letting a crime persist during the time it takes an officer in that jurisdiction to respond. However, the bill could also increase costs for counties if procedures of intervening and responding agencies are different, and those differences create confusion during the emergency situation. However, a precise fiscal effect cannot be estimated. The League of Kansas Municipalities states that some additional staff time may be required to ensure enforcement of the bill; however, any effect would be negligible.

The Office of Judicial Administration states enactment of the bill would have a negligible effect on its expenditures and revenues. The Adjutant General, Office of the Attorney General, Kansas Bureau of Investigation, Kansas Highway Patrol, Board of Regents, University of Kansas, University of Kansas Medical Center, and Kansas State University all indicate that the enactment of the bill would not have a fiscal effect. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2023 Governor's Budget Report*.

### *HB 2582 (Disclosure of CINC Information to Law Enforcement Agencies)*

According to the fiscal note prepared by the Division of the Budget on HB 2582 as introduced, DCF, the Department of Corrections, the Office of Judicial Administration, and

Kansas Highway Patrol indicate enactment of the bill would have no fiscal effect on the agencies or the Judicial Branch, respectively. The Kansas Association of Counties indicates enactment of the bill would result in the sharing of information between DCF and county law enforcement officials and would likely reduce county costs by preventing duplicated investigative efforts.

Law enforcement; criminal history record information; fingerprints; rap back programs; Kansas Bureau of Investigation; surveillance; real property; Kansas Department of Wildlife and Parks; warrants; law enforcement officers; jurisdiction; criminal history record information, fingerprints; Rap Back programs; Kansas Bureau of Investigation; Revised Kansas Code for Care of Children; child in need of care; Department for Children and Families; law enforcement agencies; investigation; exchange of information; confidentiality

ccrb_hb2299_01_0000.odt