

*As Amended by Senate Committee*

{As Amended by House Committee of the Whole}

**As Amended by House Committee**

*Session of 2014*

**HOUSE BILL No. 2555**

By Committee on Corrections and Juvenile Justice

1-31

1 AN ACT concerning criminal procedure; relating to arrest warrants; search  
2 warrants; amending K.S.A. 22-2302 and K.S.A. 2013 Supp. 22-2502  
3 and repealing the existing sections.  
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 22-2302 is hereby amended to read as follows: 22-  
7 2302. (†) (a) If the magistrate finds from the complaint, or from an  
8 affidavit or affidavits filed with the complaint ~~or from other evidence~~, that  
9 there is probable cause to believe both that a crime has been committed  
10 and that the defendant has committed it, a warrant for the arrest of the  
11 defendant shall issue, except that a summons instead of a warrant may be  
12 issued if: (a) (1) The prosecuting attorney so requests; or (b) (2) in the case  
13 of a complaint alleging commission of a misdemeanor, the magistrate  
14 determines that a summons should be issued. More than one warrant or  
15 summons may issue on the same complaint. If a defendant fails to appear  
16 in response to the summons, a warrant shall issue.

17 (2) (b) Affidavits or sworn testimony in support of the probable cause  
18 requirement of this section shall not be ~~made available for examination~~  
19 ~~without a written order of the court, except that such affidavits or~~  
20 ~~testimony when requested shall be made available to the defendant or the~~  
21 ~~defendant's counsel for such disposition as either may desire~~ open to the  
22 public until the warrant or summons has been executed. Except as  
23 provided in subsections (c) and (d), the affidavits or sworn testimony shall  
24 be public court records after such execution made available for  
25 examination without a written order of the court, except that such  
26 affidavits or testimony when requested shall be made available to the  
27 defendant or the defendant's counsel for such disposition as either may  
28 desire.

29 (c) ~~The prosecuting attorney may request that the magistrate, at the~~  
30 ~~time of issuing a warrant or summons, seal the affidavits or sworn~~  
31 ~~testimony in support of the probable cause requirement of this section. The~~  
32 ~~magistrate may order affidavits or sworn testimony sealed if the~~

1 ~~prosecuting attorney establishes a compelling state interest in that:~~

2 ~~(1) Public disclosure of the affidavits or sworn testimony would~~  
3 ~~jeopardize the safety or well being of a victim, witness, confidential~~  
4 ~~source or undercover agent, or cause the destruction of evidence; or~~

5 ~~(2) the affidavits or sworn testimony contain information obtained~~  
6 ~~from a court-ordered wiretap that has not expired at the time the~~  
7 ~~prosecuting attorney requests the seal.~~

8 ~~(d) The magistrate, at the time of issuing a warrant or summons,~~  
9 ~~shall redact information from the affidavits or sworn testimony in support~~  
10 ~~of the probable cause requirement of this section that would:~~

11 ~~(1) Interfere with any prospective law enforcement action, criminal~~  
12 ~~investigation or prosecution;~~

13 ~~(2) reveal the identity of any confidential source or undercover agent;~~

14 ~~(3) reveal confidential investigative techniques or procedures not~~  
15 ~~known to the general public;~~

16 ~~(4) endanger the life or physical safety of any person;~~

17 ~~(5) reveal the name, address, phone number or any other information~~  
18 ~~which specifically and individually identifies the victim of any sexual~~  
19 ~~offense described in article 55 of chapter 21 of the Kansas Statutes~~  
20 ~~Annotated, and amendments thereto;~~

21 ~~(6) reveal the name of any minor; or~~

22 ~~(7) reveal any personal telephone number, driver's license number,~~  
23 ~~nondriver's identification number, social security number, employee~~  
24 ~~identification number, taxpayer identification number, vehicle~~  
25 ~~identification number or financial account information.~~

26 ~~(c) Affidavits or sworn testimony in support of the probable cause~~  
27 ~~requirement of this section shall be open to the public, as provided in~~  
28 ~~this subsection, upon completion of the preliminary hearing and~~  
29 ~~arraignment in felony matters and after arraignment in misdemeanor~~  
30 ~~matters. Any request for such affidavits or testimony shall be made to the~~  
31 ~~court in writing. Any requester shall also provide proper notice, in~~  
32 ~~writing, to the prosecuting attorney. Prior to release of any such~~  
33 ~~affidavits or testimony, the prosecuting attorney, the defense and the~~  
34 ~~court shall be allowed to review the request. The court shall determine if~~  
35 ~~good cause exists to either deny the request in its entirety or redact~~  
36 ~~certain sections of such affidavits or testimony pursuant to the criteria~~  
37 ~~specified in subsection (f) of K.S.A. 22-2502, and amendments thereto.~~

38 Sec. 2. K.S.A. 2013 Supp. 22-2502 is hereby amended to read as  
39 follows: 22-2502. (a) A search warrant shall be issued only upon the oral  
40 or written statement, including those conveyed or received by electronic  
41 communication, of any person under oath or affirmation which states facts  
42 sufficient to show probable cause that a crime has been, is being or is  
43 about to be committed and which particularly describes a person, place or

1 means of conveyance to be searched and things to be seized. Any  
2 statement which is made orally shall be either taken down by a certified  
3 shorthand reporter, sworn to under oath and made part of the application  
4 for a search warrant, or recorded before the magistrate from whom the  
5 search warrant is requested and sworn to under oath. Any statement orally  
6 made shall be reduced to writing as soon thereafter as possible. If the  
7 magistrate is satisfied that grounds for the application exist or that there is  
8 probable cause to believe that they exist, the magistrate may issue a search  
9 warrant for:

10 (1) The search or seizure of the following:

11 (A) Any thing which has been used in the commission of a crime, or  
12 any contraband or any property which constitutes or may be considered a  
13 part of the evidence, fruits or instrumentalities of a crime under the laws of  
14 this state, any other state or of the United States. The term "fruits" as used  
15 in this act shall be interpreted to include any property into which the thing  
16 or things unlawfully taken or possessed may have been converted;

17 (B) any person who has been kidnapped in violation of the laws of  
18 this state or who has been kidnapped in another jurisdiction and is now  
19 concealed within this state;

20 (C) any human fetus or human corpse;

21 (D) any person for whom a valid felony arrest warrant has been  
22 issued in this state or in another jurisdiction;

23 (E) (i) any information concerning the user of an electronic  
24 communication service; any information concerning the location of  
25 electronic communications systems, including, but not limited to, towers  
26 transmitting cellular signals involved in any wire communication; and any  
27 other information made through an electronic communications system;

28 (ii) the jurisdiction granted in this paragraph shall extend to  
29 information held by entities registered to do business in the state of  
30 Kansas, submitting to the jurisdiction thereof, and entities primarily  
31 located outside the state of Kansas if the jurisdiction in which the entity is  
32 primarily located recognizes the authority of the magistrate to issue the  
33 search warrant; or

34 (2) the installation, maintenance and use of a tracking device.

35 (b) (1) The search warrant under subsection (a)(2) shall authorize the  
36 installation and use of the tracking device to track and collect tracking data  
37 relating to a person or property for a specified period of time, not to  
38 exceed 30 days from the date of the installation of the device.

39 (2) The search warrant under subsection (a)(2) may authorize the  
40 retrieval of the tracking data recorded by the tracking device during the  
41 specified period of time for authorized use of such tracking device within a  
42 reasonable time after the expiration of such warrant, for good cause  
43 shown.

1 (3) The magistrate may, for good cause shown, grant one or more  
2 extensions of a search warrant under subsection (a)(2) for the use of a  
3 tracking device, not to exceed 30 days each.

4 (c) Before ruling on a request for a search warrant, the magistrate  
5 may require the affiant to appear personally and may examine under oath  
6 the affiant and any witnesses that the affiant may produce. Such  
7 proceeding shall be taken down by a certified shorthand reporter or  
8 recording equipment and made part of the application for a search warrant.

9 (d) *(1) Affidavits or sworn testimony in support of the probable cause*  
10 *requirement of this section or search warrants for tracking devices shall*  
11 *not be made available for examination without a written order of the court,*  
12 *except that such affidavits or testimony as provided in subsection*  
13 *subsections (d)(2) and (d)(3).*

14 *(2) Except as provided in subsections (e) and (f), The affidavits or*  
15 *sworn testimony, when requested, shall be made available to the defendant*  
16 *or the defendant's counsel for such disposition as either may desire 30*  
17 *days after the warrant has been executed to:*

18 *(A) {the defendant or the defendant's counsel for such disposition*  
19 *as either may desire.}*

20 *(3) The affidavits or testimony, redacted in accordance with the*  
21 *criteria specified in subsection (f), shall be made available to:*

22 *{(B)} (A) Any person searched pursuant to such warrant{, 30 days*  
23 *after the warrant has been when the warrant is executed}; and*

24 *(B) {(C)} (B) any owner or person in possession of the place or means*  
25 *of conveyance searched pursuant to such warrant{, 30 days after the*  
26 *warrant has been when the warrant is executed}.*

27 *(e) The prosecuting attorney may request that the magistrate, at the*  
28 *time of issuing a search warrant, or at any time within 29 days after the*  
29 *warrant has been executed, seal the affidavits or sworn testimony in*  
30 *support of the probable cause requirement of this section. The magistrate*  
31 *may order affidavits or sworn testimony sealed if the prosecuting attorney*  
32 *establishes a compelling state interest in that:*

33 *(1) Public disclosure of the affidavits or sworn testimony would*  
34 *jeopardize the safety or well being of a victim, witness, confidential*  
35 *source or undercover agent, or cause the destruction of evidence; or*

36 *(2) the affidavits or sworn testimony contain information obtained*  
37 *from a court-ordered wiretap that has not expired at the time the*  
38 *prosecuting attorney requests the seal.*

39 *(f) The magistrate, at the time of issuing a search warrant, or at any*  
40 *time within 29 days after the warrant has been executed, shall redact*  
41 *information from the affidavits or sworn testimony in support of the*  
42 *probable cause requirement of this section that would:*

43 *(1) Interfere with any prospective law enforcement action, criminal:*

1 ~~investigation or prosecution:~~

2 ~~(2) reveal the identity of any confidential source or undercover agent;~~

3 ~~(3) reveal confidential investigative techniques or procedures not~~  
4 ~~known to the general public;~~

5 ~~(4) endanger the life or physical safety of any person;~~

6 ~~(5) reveal the name, address, phone number or any other information~~  
7 ~~which specifically and individually identifies the victim of any sexual~~  
8 ~~offense described in article 55 of chapter 21 of the Kansas Statutes~~  
9 ~~Annotated, and amendments thereto;~~

10 ~~(6) reveal the name of any minor; or~~

11 ~~(7) reveal any personal telephone number, driver's license number;~~  
12 ~~nondriver's identification number, social security number, employee~~  
13 ~~identification number, taxpayer identification number, vehicle~~  
14 ~~identification number or financial account information.~~

15 (e) Any person may file a written request with the clerk of the court  
16 to disclose affidavits or sworn testimony in support of the probable cause  
17 requirement of this section at least 14 days after execution of the  
18 warrant using the following procedure:

19 (1) The clerk of the court shall provide written notice of the request  
20 to the law enforcement agency who executed the warrant and the  
21 prosecuting attorney of the county where the warrant was executed. The  
22 law enforcement agency and the prosecuting attorney shall have seven  
23 days after receiving such notice to file any objection with the court.

24 (2) The magistrate who signed the warrant shall review the  
25 disclosure request.

26 (3) If the prosecuting attorney or the law enforcement agency  
27 objects to the disclosure, the court shall allow the prosecuting attorney  
28 or the law enforcement agency to present the reasons for such objection  
29 to the court for an in camera review.

30 (4) If the court finds it is more probably true than not that  
31 disclosure would violate one or more of the criteria listed in subsection  
32 (f), the court may: (A) Deny disclosure and advise the requester of such  
33 decision in writing; or (B) permit disclosure of affidavits or testimony  
34 redacted in accordance with the criteria specified in subsection (f).

35 (f) The court may deny disclosure of the affidavits or sworn  
36 testimony in support of the probable cause requirement of this section,  
37 or permit disclosure of redacted affidavits or testimony, if disclosure of  
38 such affidavits or testimony would:

39 (1) Endanger the life, jeopardize the safety, cause emotional and  
40 psychological distress or public humiliation of a victim, witness,  
41 confidential source or undercover agent, or cause the destruction of  
42 evidence;

43 (2) reveal information obtained from a court-ordered wiretap;

1       (3) *reveal any pending or prospective law enforcement action,*  
2 *criminal investigation or prosecution;*

3       (4) *reveal confidential investigative techniques or procedures not*  
4 *known to the general public;*

5       (5) *endanger the life, physical safety or cause emotional and*  
6 *psychological distress or public humiliation of any person;*

7       (6) *reveal the name, address, phone number or any other*  
8 *information which specifically and individually identifies the victim of*  
9 *any sexual offense as described in article 55 of chapter 21 of the Kansas*  
10 *Statutes Annotated, and amendments thereto;*

11       (7) *reveal the name of any minor; or*

12       (8) *reveal any personal telephone number, driver's license number,*  
13 *nondriver's identification number, social security number, employee*  
14 *identification number, taxpayer identification number, vehicle*  
15 *identification number or financial account information.*

16       ~~(e)-(f)~~ (g) As used in this section:

17       (1) "Electronic communication" means the use of electronic equipment  
18 to send or transfer a copy of an original document;

19       (2) "electronic communication service" and "electronic  
20 communication system" have the meaning as defined in K.S.A. 22-2514,  
21 and amendments thereto;

22       (3) "tracking data" means information gathered or recorded by a  
23 tracking device; and

24       (4) "tracking device" means an electronic or mechanical device that  
25 permits a person to remotely determine or track the position or movement  
26 of a person or object. "Tracking device" includes, but is not limited to, a  
27 device that stores geographic data for subsequent access or analysis and a  
28 device that allows for the real-time monitoring of movement.

29       ~~(f)-(g)~~ (h) Nothing in this section shall be construed as requiring a  
30 search warrant for cellular location information in an emergency situation  
31 pursuant to K.S.A. 22-4615, and amendments thereto.

32       Sec. 3. K.S.A. 22-2302 and K.S.A. 2013 Supp. 22-2502 are hereby  
33 repealed.

34       Sec. 4. This act shall take effect and be in force from and after its  
35 publication in the statute book.