

HOUSE BILL No. 2048

By 2014 Special Committee on Judiciary

1-20

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to search warrants; amending K.S.A. 2014 Supp. 22-2502 and
3 repealing the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2014 Supp. 22-2502 is hereby amended to read as
7 follows: 22-2502.(a) A search warrant shall be issued only upon the oral or
8 written statement, including those conveyed or received by electronic
9 communication, of any person under oath or affirmation which states facts
10 sufficient to show probable cause that a crime has been, is being or is
11 about to be committed and which particularly describes a person, place or
12 means of conveyance to be searched and things to be seized. Any
13 statement which is made orally shall be either taken down by a certified
14 shorthand reporter, sworn to under oath and made part of the application
15 for a search warrant, or recorded before the magistrate from whom the
16 search warrant is requested and sworn to under oath. Any statement orally
17 made shall be reduced to writing as soon thereafter as possible. If the
18 magistrate is satisfied that grounds for the application exist or that there is
19 probable cause to believe that they exist, the magistrate may issue a search
20 warrant for:

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

22 (A) ~~Any thing which has been used in the commission of a crime, or~~
23 ~~any contraband or any property which constitutes or may be considered a~~
24 ~~part of the evidence, fruits or instrumentalities of a crime under the laws of~~
25 ~~this state, any other state or of the United States. The term "fruits" as used~~
26 ~~in this act shall be interpreted to include any property into which the thing~~
27 ~~or things unlawfully taken or possessed may have been converted~~ *Any*
28 *item that can be seized under the fourth amendment to the United States*
29 *constitution* ~~Any thing which has been used in the commission of a~~
30 ~~crime, or any contraband or any property which constitutes or may be~~
31 ~~considered a part of the evidence, fruits or instrumentalities of a crime~~
32 ~~under the laws of this state, any other state or of the United States.~~
33 ~~The term "fruits" as used in this act shall be interpreted to include~~
34 ~~any property into which the thing or things unlawfully taken or~~

1 ~~possessed may have been converted~~ *item that can be seized under the*
2 *fourth amendment of the United States constitution;*

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

6 (C) any human fetus or human corpse;

7 **(D) any biological material, DNA, cellular material, blood, hair or**
8 **fingerprints;**

9 ~~(E)~~ (E) any person for whom a valid felony arrest warrant has been
10 issued in this state or in another jurisdiction; or

11 ~~(E)~~ (F) (i) any information concerning the user of an electronic
12 communication service; any information concerning the location of
13 electronic communications systems, including, but not limited to, towers
14 transmitting cellular signals involved in any wire communication; and any
15 other information made through an electronic communications system; or

16 (ii) the jurisdiction granted in this paragraph shall extend to
17 information held by entities registered to do business in the state of
18 Kansas, submitting to the jurisdiction thereof, and entities primarily
19 located outside the state of Kansas if the jurisdiction in which the entity is
20 primarily located recognizes the authority of the magistrate to issue the
21 search warrant; or

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

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

27 (2) The search warrant under subsection (a)(2) may authorize the
28 retrieval of the tracking data recorded by the tracking device during the
29 specified period of time for authorized use of such tracking device within a
30 reasonable time after the expiration of such warrant, for good cause
31 shown.

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

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

40 (d) For a warrant executed prior to July 1, 2014, affidavits or sworn
41 testimony in support of the probable cause requirement of this section or
42 search warrants for tracking devices shall not be made available for
43 examination without a written order of the court, except that such

1 affidavits or testimony when requested shall be made available to the
2 defendant or the defendant's counsel for such disposition as either may
3 desire.

4 (e) (1) For a warrant executed on or after July 1, 2014, affidavits or
5 sworn testimony in support of the probable cause requirement of this
6 section or search warrants for tracking devices shall not be open to the
7 public until the warrant has been executed. After the warrant has been
8 executed, such affidavits or sworn testimony shall be made available to:

9 (A) The defendant or the defendant's counsel, when requested, for
10 such disposition as either may desire; and

11 (B) any person, when requested, in accordance with the requirements
12 of this subsection.

13 (2) Any person may request that affidavits or sworn testimony be
14 disclosed by filing such request with the clerk of the court. The clerk of the
15 court shall promptly notify the defendant or the defendant's counsel, the
16 prosecutor and the magistrate that such request was filed.

17 (3) Within five business days after receiving notice of a request for
18 disclosure from the clerk of the court, the defendant or the defendant's
19 counsel and the prosecutor may submit to the magistrate, under seal,
20 either:

21 (A) Proposed redactions, if any, to the affidavits or sworn testimony
22 and the reasons supporting such proposed redactions; or

23 (B) a motion to seal the affidavits or sworn testimony and the reasons
24 supporting such proposed seal.

25 (4) The magistrate shall review the requested affidavits or sworn
26 testimony and any proposed redactions or motion to seal submitted by the
27 defendant, the defendant's counsel or the prosecutor. The magistrate shall
28 make appropriate redactions, or seal the affidavits or sworn testimony, as
29 necessary to prevent public disclosure of information that would:

30 (A) Jeopardize the safety or well being of a victim, witness,
31 confidential source or undercover agent, or cause the destruction of
32 evidence;

33 (B) reveal information obtained from a court-ordered wiretap or from
34 a search warrant for a tracking device that has not expired;

35 (C) interfere with any prospective law enforcement action, criminal
36 investigation or prosecution;

37 (D) reveal the identity of any confidential source or undercover agent;

38 (E) reveal confidential investigative techniques or procedures not
39 known to the general public;

40 (F) endanger the life or physical safety of any person;

41 (G) reveal the name, address, telephone number or any other
42 information which specifically and individually identifies the victim of any
43 sexual offense described in article 35 of chapter 21 of the Kansas Statutes

1 Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas
2 Statutes Annotated or K.S.A. 2014 Supp. 21-6419 through 21-6422, and
3 amendments thereto;

4 (H) reveal the name of any minor; or

5 (I) reveal any date of birth, personal or business telephone number,
6 driver's license number, nondriver's identification number, social security
7 number, employee identification number, taxpayer identification number,
8 vehicle identification number or financial account information.

9 (5) Within five business days after receiving proposed redactions or a
10 motion to seal from the defendant, the defendant's counsel or the
11 prosecutor, or within 10 business days after receiving notice of a request
12 for disclosure, whichever is earlier, the magistrate shall either:

13 (A) Order disclosure of the affidavits or sworn testimony with
14 appropriate redactions, if any; or

15 (B) order the affidavits or sworn testimony sealed and not subject to
16 public disclosure.

17 (f) As used in this section:

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

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

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

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

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

33 Sec. 2. K.S.A. 2014 Supp. 22-2502 is hereby repealed.

34 Sec. 3. This act shall take effect and be in force from and after its
35 publication in the statute book.