

As Amended by Senate Committee

{As Amended by House Committee of the Whole}

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Session of 2016

HOUSE BILL No. 2545

By Committee on Corrections and Juvenile Justice

1-26

1 AN ACT concerning criminal procedure; relating to arrest warrants; search
2 warrants; amending K.S.A. 2015 Supp. 22-2302 and 22-2502 and
3 repealing the existing sections.
4

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

6 Section 1. K.S.A. 2015 Supp. 22-2302 is hereby amended to read as
7 follows: 22-2302. (a) If the magistrate finds from the complaint, or from
8 an affidavit or affidavits filed with the complaint or from sworn testimony,
9 that there is probable cause to believe both that a crime has been
10 committed and that the defendant has committed it, a warrant for the arrest
11 of the defendant shall issue, except that a summons instead of a warrant
12 may be issued if: (1) The prosecuting attorney so requests; or (2) in the
13 case 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 (b) For a warrant or summons executed prior to July 1, 2014,
18 affidavits or sworn testimony in support of the probable cause requirement
19 of this section shall not be made available for examination without a
20 written order of the court, except that such affidavits or testimony when
21 requested shall be made available to the defendant or the defendant's
22 counsel for such disposition as either may desire.

23 (c) (1) For a warrant or summons executed on or after July 1, 2014,
24 affidavits or sworn testimony in support of the probable cause requirement
25 of this section shall not be open to the public until the warrant or summons
26 has been executed. After the warrant or summons has been executed, such
27 affidavits or sworn testimony shall be made available to:

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

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

32 (2) Any person may request that affidavits or sworn testimony be

1 disclosed by filing such request with the clerk of the court. The clerk of the
2 court shall promptly notify the defendant or the defendant's counsel, the
3 prosecutor and the magistrate ~~and the prosecutor shall promptly notify~~
4 ~~any victim~~ that such request was filed. **{The prosecutor shall promptly**
5 **notify any victim.}** **For the purposes of this subsection, victim shall**
6 **include any victim of an alleged crime that resulted in the issuance of**
7 **the arrest warrant, or, if the victim is deceased, the victim's family, as**
8 **defined in K.S.A. 74-7335, and amendments thereto.**

9 (3) Within five business days after receiving notice of a request for
10 disclosure from the clerk of the court, the defendant or the defendant's
11 counsel, ~~any victim~~ and the prosecutor may submit to the magistrate,
12 under seal, either:

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

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

17 (4) The magistrate shall review the requested affidavits or sworn
18 testimony and any proposed redactions or motion to seal submitted by the
19 defendant, the defendant's counsel, ~~any victim~~ or the prosecutor. The
20 magistrate shall make appropriate redactions, or seal the affidavits or
21 sworn testimony, as necessary to prevent public disclosure of information
22 that would:

23 (A) Jeopardize the **physical, mental or emotional** safety or well
24 being of a victim, witness, confidential source or undercover agent, or
25 cause the destruction of evidence;

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

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

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

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

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

34 (G) reveal the name, address, telephone number or any other
35 information which specifically and individually identifies the victim of any
36 sexual offense described in article 35 of chapter 21 of the Kansas Statutes
37 Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas
38 Statutes Annotated or K.S.A. 2015 Supp. 21-6419 through 21-6422, and
39 amendments thereto;

40 (H) reveal the name of any minor; ~~or~~

41 (I) reveal any date of birth, personal or business telephone number,
42 driver's license number, nondriver's identification number, social security
43 number, employee identification number, taxpayer identification number,

1 vehicle identification number or financial account information; or

2 *(J) constitute a clearly unwarranted invasion of personal privacy.*
3 *As used in this subparagraph, "clearly unwarranted invasion of*
4 *personal privacy" means revealing information that would be highly*
5 *offensive to a reasonable person and is totally unrelated to the alleged*
6 *crime that resulted in the issuance of the arrest warrant, including*
7 *information totally unrelated to the alleged crime that may pose a risk to*
8 *a person or property and is not of legitimate concern to the public.*

9 (5) Within five business days after receiving proposed redactions or a
10 motion to seal from the defendant, the defendant's counsel, ~~any victim~~
11 the prosecutor, or within 10 business days after receiving notice of a
12 request 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 (6) (A) *If the magistrate orders disclosure of the affidavits or sworn*
18 *testimony with appropriate redactions, if any, to any person in accordance*
19 *with the requirements of this subsection, then such affidavits or sworn*
20 *testimony shall become part of the court record and shall be accessible to*
21 *the public.*

22 (B) *If the magistrate orders the affidavits or sworn testimony sealed*
23 *and not subject to public disclosure in accordance with the requirements*
24 *of this subsection, then such affidavits or sworn testimony shall ~~not~~*
25 *become part of the court record ~~and shall not be~~ that is not accessible to*
26 *the public.*

27 (C) *Any request for disclosure of affidavits or sworn testimony in*
28 *accordance with the requirements of this subsection shall become part of*
29 *the court record and shall be accessible to the public, regardless of*
30 *whether the magistrate orders disclosure with appropriate redactions, if*
31 *any, or sealing of the requested affidavit or sworn testimony.*

32 Sec. 2. K.S.A. 2015 Supp. 22-2502 is hereby amended to read as
33 follows: 22-2502. (a) A search warrant shall be issued only upon the oral
34 or written statement, including those conveyed or received by electronic
35 communication, of any person under oath or affirmation which states facts
36 sufficient to show probable cause that a crime has been, is being or is
37 about to be committed and which particularly describes a person, place or
38 means of conveyance to be searched and things to be seized. Any
39 statement which is made orally shall be either taken down by a certified
40 shorthand reporter, sworn to under oath and made part of the application
41 for a search warrant, or recorded before the magistrate from whom the
42 search warrant is requested and sworn to under oath. Any statement orally
43 made shall be reduced to writing as soon thereafter as possible. If the

1 magistrate is satisfied that grounds for the application exist or that there is
2 probable cause to believe that they exist, the magistrate may issue a search
3 warrant for:

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

5 (A) Any thing that can be seized under the fourth amendment of the
6 United States constitution;

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

13 (C) any person who has been kidnapped in violation of the laws of
14 this state or who has been kidnapped in another jurisdiction and is now
15 concealed within this state;

16 (D) any human fetus or human corpse;

17 (E) any biological material, DNA, cellular material, blood, hair or
18 fingerprints;

19 (F) any person for whom a valid felony arrest warrant has been issued
20 in this state or in another jurisdiction; or

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

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

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

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

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

42 (3) The magistrate may, for good cause shown, grant one or more
43 extensions of a search warrant under subsection (a)(2) for the use of a

1 tracking device, not to exceed 30 days each.

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

7 (d) For a warrant executed prior to July 1, 2014, affidavits or sworn
8 testimony in support of the probable cause requirement of this section or
9 search warrants for tracking devices shall not be made available for
10 examination without a written order of the court, except that such
11 affidavits or testimony when requested shall be made available to the
12 defendant or the defendant's counsel for such disposition as either may
13 desire.

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

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

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

23 (2) Any person may request that affidavits or sworn testimony be
24 disclosed by filing such request with the clerk of the court. The clerk of the
25 court shall promptly notify the defendant or the defendant's counsel, the
26 prosecutor and the magistrate ~~and the prosecutor shall promptly notify~~
27 ~~any victim~~ that such request was filed. **{The prosecutor shall promptly**
28 **notify any victim.}**

29 (3) Within five business days after receiving notice of a request for
30 disclosure from the clerk of the court, the defendant or the defendant's
31 counsel, ~~any victim~~ and the prosecutor may submit to the magistrate,
32 under seal, either:

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

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

37 (4) The magistrate shall review the requested affidavits or sworn
38 testimony and any proposed redactions or motion to seal submitted by the
39 defendant, the defendant's counsel, ~~any victim~~ or the prosecutor. The
40 magistrate shall make appropriate redactions, or seal the affidavits or
41 sworn testimony, as necessary to prevent public disclosure of information
42 that would:

43 (A) Jeopardize the **{physical, mental or emotional}** safety or well

1 being of a victim, witness, confidential source or undercover agent, or
2 cause the destruction of evidence;

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

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

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

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

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

11 (G) reveal the name, address, telephone number or any other
12 information which specifically and individually identifies the victim of any
13 sexual offense described in article 35 of chapter 21 of the Kansas Statutes
14 Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas
15 Statutes Annotated or K.S.A. 2015 Supp. 21-6419 through 21-6422, and
16 amendments thereto;

17 (H) reveal the name of any minor; ~~or~~

18 (I) reveal any date of birth, personal or business telephone number,
19 driver's license number, nondriver's identification number, social security
20 number, employee identification number, taxpayer identification number,
21 vehicle identification number or financial account information; *or*

22 ***(J) constitute a clearly unwarranted invasion of personal privacy.***
23 ***As used in this subparagraph, "clearly unwarranted invasion of***
24 ***personal privacy" means revealing information that would be highly***
25 ***offensive to a reasonable person and is totally unrelated to the alleged***
26 ***crime that resulted in the issuance of the search warrant, including***
27 ***information totally unrelated to the alleged crime that may pose a risk to***
28 ***a person or property and is not of legitimate concern to the public.***

29 (5) Within five business days after receiving proposed redactions or a
30 motion to seal from the defendant, the defendant's counsel, ~~any victim~~
31 the prosecutor, or within 10 business days after receiving notice of a
32 request for disclosure, whichever is earlier, the magistrate shall either:

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

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

37 ***(6) (A) If the magistrate orders disclosure of the affidavits or sworn***
38 ***testimony with appropriate redactions, if any, to any person in accordance***
39 ***with the requirements of this subsection, then such affidavits or sworn***
40 ***testimony shall become part of the court record and shall be accessible to***
41 ***the public.***

42 ***(B) If the magistrate orders the affidavits or sworn testimony sealed***
43 ***and not subject to public disclosure in accordance with the requirements***

1 *of this subsection, then such affidavits or sworn testimony shall ~~not~~*
2 *become part of the court record ~~and shall not be~~ that is not accessible to*
3 *the public.*

4 (C) *Any request for disclosure of affidavits or sworn testimony in*
5 *accordance with the requirements of this subsection shall become part of*
6 *the court record and shall be accessible to the public, regardless of*
7 *whether the magistrate orders disclosure with appropriate redactions, if*
8 *any, or sealing of the requested affidavit or sworn testimony.*

9 (f) As used in this section:

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

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

15 (3) "tracking data" means information gathered or recorded by a
16 tracking device; ~~and~~

17 (4) "tracking device" means an electronic or mechanical device that
18 permits a person to remotely determine or track the position or movement
19 of a person or object. "Tracking device" includes, but is not limited to, a
20 device that stores geographic data for subsequent access or analysis and a
21 device that allows for the real-time monitoring of movement; **and**

22 **(5) "victim" shall include any victim of an alleged crime that**
23 **resulted in the issuance of the search warrant, or, if the victim is**
24 **deceased, the victim's family, as defined in K.S.A. 74-7335, and**
25 **amendments thereto.**

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

29 Sec. 3. K.S.A. 2015 Supp. 22-2302 and 22-2502 are hereby repealed.

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