

SENATE BILL No. 415

By Senator Journey

1-19

9 AN ACT concerning search warrants; relating to affidavit or testimony
10 supporting probable cause; access; statute of limitations tolled; amend-
11 ing K.S.A. 22-2502 and repealing the existing section.
12

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

14 Section 1. K.S.A. 22-2502 is hereby amended to read as follows: 22-
15 2502. (a) A search warrant shall be issued only upon the oral or written
16 statement, including those conveyed or received by telefacsimile com-
17 munication, of any person under oath or affirmation which states facts
18 sufficient to show probable cause that a crime has been or is being com-
19 mitted and which particularly describes a person, place or means of con-
20 veyance to be searched and things to be seized. Any statement which is
21 made orally shall be either taken down by a certified shorthand reporter,
22 sworn to under oath and made part of the application for a search warrant,
23 or recorded before the magistrate from whom the search warrant is re-
24 quested and sworn to under oath. Any statement orally made shall be
25 reduced to writing as soon thereafter as possible. If the magistrate is
26 satisfied that grounds for the application exist or that there is probable
27 cause to believe that they exist, the magistrate may issue a search warrant
28 for the seizure of the following:

29 (1) Any things which have been used in the commission of a crime,
30 or any contraband or any property which constitutes or may be considered
31 a part of the evidence, fruits or instrumentalities of a crime under the
32 laws of this state, any other state or of the United States. The term "fruits"
33 as used in this act shall be interpreted to include any property into which
34 the thing or things unlawfully taken or possessed may have been
35 converted.

36 (2) Any person who has been kidnapped in violation of the laws of
37 this state or who has been kidnapped in another jurisdiction and is now
38 concealed within this state.

39 (3) Any human fetus or human corpse.

40 (4) Any person for whom a valid felony arrest warrant has been issued
41 in this state or in another jurisdiction.

42 (b) Before ruling on a request for a search warrant, the magistrate
43 may require the affiant to appear personally and may examine under oath

1 the affiant and any witnesses that the affiant may produce. Such pro-
2 ceeding shall be taken down by a certified shorthand reporter or record-
3 ing equipment and made part of the application for a search warrant.

4 (c) Affidavits or sworn testimony in support of the probable cause
5 requirement of this section shall not be made available for examination
6 without a written order of the court, except that such affidavits or testi-
7 mony when requested shall be made available to:

8 (1) The defendant or the defendant's counsel for such disposition as
9 either may desire;

10 (2) *the public after the defendant waives preliminary trial or is bound*
11 *over for trial; or*

12 (3) *a homeowner, lessee or occupant who was the subject of the search*
13 *warrant, when a house belonging to or occupied by such person was*
14 *searched; however, no charges were filed within one year after the search.*
15 *During such year, any limitation of action, pursuant to K.S.A. 60-501 et*
16 *seq., and amendments thereto, shall be tolled for any civil cause of action*
17 *relating to the search.*

18 (d) As used in this section, telefacsimile communication means the
19 use of electronic equipment to send or transfer a copy of an original
20 document via telephone lines.

21 Sec. 2. K.S.A. 22-2502 is hereby repealed.

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