

SENATE BILL No. 186

By Committee on Judiciary

2-4

1 AN ACT concerning criminal procedure; relating to affidavits or sworn
2 testimony in support of probable cause; requiring such information to
3 be made available to law enforcement; amending K.S.A. 22-2302 and
4 repealing the existing section.

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

7 Section 1. K.S.A. 22-2302 is hereby amended to read as follows: 22-
8 2302. (a) (1) If the magistrate finds from the complaint, or from an
9 affidavit or affidavits filed with the complaint or from sworn testimony,
10 that there is probable cause to believe both that a crime has been
11 committed and that the defendant has committed it, a warrant for the arrest
12 of the defendant shall issue, except that a summons instead of a warrant
13 may be issued if:

14 (1)(A) The prosecuting attorney so requests; or

15 (2)(B) in the case of a complaint alleging commission of a
16 misdemeanor, the magistrate determines that a summons should be issued.

17 (2) More than one warrant or summons may issue on the same
18 complaint. If a defendant fails to appear in response to the summons, a
19 warrant shall issue.

20 (b) ~~For a warrant or summons executed prior to July 1, 2014,~~
21 ~~affidavits or sworn testimony in support of the probable cause requirement~~
22 ~~of this section shall not be made available for examination without a~~
23 ~~written order of the court, except that such affidavits or testimony when~~
24 ~~requested shall be made available to the defendant or the defendant's~~
25 ~~counsel for such disposition as either may desire.~~

26 (e)(1) ~~For a warrant or summons executed on or after July 1, 2014,~~
27 Affidavits or sworn testimony in support of the probable cause
28 requirement of this section *shall be made available to law enforcement*
29 *agencies prior to execution of the warrant or summons, but* shall not be
30 open to the *general* public until the warrant or summons has been
31 executed. After the warrant or summons has been executed, such affidavits
32 or sworn testimony shall be made available to:

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

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

1 (2) Any person may request that affidavits or sworn testimony be
2 disclosed by filing such request with the clerk of the court. Upon entry of
3 appearance by an attorney on behalf of the defendant, or indication by the
4 defendant to the court that such defendant will represent the defendant's
5 self, the clerk of the court shall promptly notify the defendant or the
6 defendant's counsel, the prosecutor and the magistrate that such request
7 was filed. The prosecutor shall promptly notify any victim. For the
8 purposes of this subsection, victim shall include any victim of an alleged
9 crime that resulted in the issuance of the arrest warrant, or, if the victim is
10 deceased, the victim's family, as defined in K.S.A. 74-7335, and
11 amendments thereto.

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

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

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

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

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

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

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

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

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

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

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

42 (H) reveal the name of any minor;

43 (I) reveal any date of birth, personal or business telephone number,

1 driver's license number, nondriver's identification number, social security
2 number, employee identification number, taxpayer identification number,
3 vehicle identification number or financial account information; or

4 (J) constitute a clearly unwarranted invasion of personal privacy. As
5 used in this subparagraph, "clearly unwarranted invasion of personal
6 privacy" means revealing information that would be highly offensive to a
7 reasonable person and is totally unrelated to the alleged crime that resulted
8 in the issuance of the arrest warrant, including information totally
9 unrelated to the alleged crime that may pose a risk to a person or property
10 and is not of legitimate concern to the public. The provisions of this
11 subparagraph shall only be used to redact and shall not be used to seal
12 affidavits or sworn testimony.

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

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

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

21 (6) (A) If the magistrate orders disclosure of the affidavits or sworn
22 testimony with appropriate redactions, if any, to any person in accordance
23 with the requirements of this subsection, then such affidavits or sworn
24 testimony shall become part of the court record and shall be accessible to
25 the public.

26 (B) If the magistrate orders the affidavits or sworn testimony sealed
27 and not subject to public disclosure in accordance with the requirements of
28 this subsection, then such affidavits or sworn testimony shall become part
29 of the court record that is not accessible to the public.

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

35 Sec. 2. K.S.A. 22-2302 is hereby repealed.

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