

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. (H) (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.~~

25 (c) The prosecuting attorney may request that the magistrate, at the
26 time of issuing a warrant or summons, seal the affidavits or sworn
27 testimony in support of the probable cause requirement of this section. The
28 magistrate may order affidavits or sworn testimony sealed if the
29 prosecuting attorney establishes a compelling state interest in that:

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

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

36 (d) The magistrate, at the time of issuing a warrant or summons,

1 *shall redact information from the affidavits or sworn testimony in support*
2 *of the probable cause requirement of this section that would:*

3 (1) *Interfere with any prospective law enforcement action, criminal*
4 *investigation or prosecution;*

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

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

8 (4) *endanger the life or physical safety of any person;*

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

13 (6) *reveal the name of any minor; or*

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

18 Sec. 2. K.S.A. 2013 Supp. 22-2502 is hereby amended to read as
19 follows: 22-2502. (a) A search warrant shall be issued only upon the oral
20 or written statement, including those conveyed or received by electronic
21 communication, of any person under oath or affirmation which states facts
22 sufficient to show probable cause that a crime has been, is being or is
23 about to be committed and which particularly describes a person, place or
24 means of conveyance to be searched and things to be seized. Any
25 statement which is made orally shall be either taken down by a certified
26 shorthand reporter, sworn to under oath and made part of the application
27 for a search warrant, or recorded before the magistrate from whom the
28 search warrant is requested and sworn to under oath. Any statement orally
29 made shall be reduced to writing as soon thereafter as possible. If the
30 magistrate is satisfied that grounds for the application exist or that there is
31 probable cause to believe that they exist, the magistrate may issue a search
32 warrant for:

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

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

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

43 (C) any human fetus or human corpse;

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

3 (E) (i) any information concerning the user of an electronic
4 communication service; any information concerning the location of
5 electronic communications systems, including, but not limited to, towers
6 transmitting cellular signals involved in any wire communication; and any
7 other information made through an electronic communications system;

8 (ii) the jurisdiction granted in this paragraph shall extend to
9 information held by entities registered to do business in the state of
10 Kansas, submitting to the jurisdiction thereof, and entities primarily
11 located outside the state of Kansas if the jurisdiction in which the entity is
12 primarily located recognizes the authority of the magistrate to issue the
13 search warrant; or

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

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

19 (2) The search warrant under subsection (a)(2) may authorize the
20 retrieval of the tracking data recorded by the tracking device during the
21 specified period of time for authorized use of such tracking device within a
22 reasonable time after the expiration of such warrant, for good cause
23 shown.

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

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

32 (d) (1) Affidavits or sworn testimony in support of the probable cause
33 requirement of this section or search warrants for tracking devices shall
34 not be made available for examination without a written order of the court,
35 ~~except that such affidavits or testimony as provided in subsection (d)(2).~~

36 (2) ~~Except as provided in subsections (e) and (f), the affidavits or~~
37 ~~sworn testimony, when requested, shall be made available to the defendant~~
38 ~~or the defendant's counsel for such disposition as either may desire 30~~
39 ~~days after the warrant has been executed to: (A) Any person searched~~
40 ~~pursuant to such warrant; and (B) any owner or person in possession of~~
41 ~~the place or means of conveyance searched pursuant to such warrant.~~

42 (e) The prosecuting attorney may request that the magistrate, at the
43 time of issuing a search warrant, or at any time within 29 days after the

1 warrant has been executed, seal the affidavits or sworn testimony in
2 support of the probable cause requirement of this section. The magistrate
3 may order affidavits or sworn testimony sealed if the prosecuting attorney
4 establishes a compelling state interest in that:

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

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

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

15 (1) Interfere with any prospective law enforcement action, criminal
16 investigation or prosecution;

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

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

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

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

25 (6) reveal the name of any minor; or

26 (7) reveal any personal telephone number, driver's license number,
27 nondriver's identification number, social security number, employee
28 identification number, taxpayer identification number, vehicle
29 identification number or financial account information.

30 (⊕) (f) As used in this section:

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

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

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

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

43 (⊕) (g) Nothing in this section shall be construed as requiring a search

1 warrant for cellular location information in an emergency situation
2 pursuant to K.S.A. 22-4615, and amendments thereto.

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

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