

SESSION OF 2014

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2555

As Amended by Senate Committee on Judiciary

Brief*

HB 2555, as amended, would amend the law concerning affidavits and sworn testimony used in support of the probable cause requirement for warrants. Specifically, it would strike language that allows a magistrate to issue an arrest warrant or summons based on "other evidence." Additionally, the bill would provide affidavits and sworn testimony used in support of arrest warrants and any summons would be open to the public after arraignment in misdemeanor matters and upon completion of the preliminary hearing and arraignment in felony matters.

At that time, the bill would outline a procedure for securing a written order of the court to examine probable cause affidavits and sworn testimony. The bill would require the requester of such an order to make the request in writing to the court and to provide written notice of the request to the prosecuting attorney. Prior to release, the prosecuting attorney, defense, and the court would be allowed to review the request, and the court would determine whether good cause exists to deny the request in its entirety or redact certain sections of the affidavits or testimony pursuant to criteria outlined below.

When a search warrant is executed, the bill would require affidavits and sworn testimony used in support of the search warrant to be made available to any person searched and any owner or person in possession of the place or means of conveyance searched pursuant to such warrant. The affidavits or testimony could be redacted when appropriate, pursuant to criteria outlined below.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Further, the bill would outline a procedure allowing any person to file a written request with the clerk of the court to disclose affidavits or sworn testimony at least 14 days after execution of the warrant. Under this procedure, the clerk of the court would provide written notice of the request to the law enforcement agency who executed the warrant and the prosecuting attorney of the county where the warrant was executed. Upon receipt of the notice, the law enforcement agency and prosecuting attorney would then have seven days to file any objection with the court. The magistrate who signed the warrant also would review the disclosure request. If the prosecuting attorney or law enforcement agency objects to disclosure, the court would give each an opportunity to present reasons for such objection to the court for an in camera review. The court could deny disclosure and advise the requester of such decision in writing or permit disclosure of redacted affidavits or sworn testimony.

In determining what action is appropriate, the bill would allow the court to deny disclosure or permit disclosure of redacted affidavits or sworn testimony if disclosure would:

- Endanger the life, jeopardize the safety, or cause emotional and psychological distress or public humiliation of a victim, witness, confidential source, or undercover agent, or cause the destruction of evidence;
- Reveal information obtained from a court-ordered wiretap;
- Reveal any pending or prospective law enforcement action, criminal investigation, or prosecution;
- Reveal confidential investigative techniques or procedures not known to the general public;

- Endanger the life or physical safety or cause emotional and psychological distress or public humiliation of any person;
- Reveal the name, address, phone number, or any other information that specifically and individually identifies the victim of a sex offense;
- Reveal the name of any minor; or
- Reveal any personal telephone number, driver's license number, nondriver's identification number, Social Security number, employee identification number, taxpayer identification number, vehicle identification number, or financial account information.

Background

In the House Judiciary Committee, Representative Rubin; representatives of the Kansas Press Association, Kansas Association of Broadcasters, Kansas Sunshine Coalition for Open Government, and Salina Journal; a law professor; and concerned citizens appeared in support of the bill. Judge Eric Yost, 18th Judicial District, and representatives of KMBZ Radio and KSHB TV submitted written proponent testimony. The Committee received neutral testimony from a representative of the Kansas Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association. Representatives of the Kansas County and District Attorneys Association and Kansas Association of Criminal Defense Lawyers appeared as opponents of the bill.

The House Committee amended the bill to allow a magistrate to seal affidavits or sworn testimony if the prosecuting attorney establishes a compelling state interest that public disclosure would jeopardize the wellbeing of a victim, witness, confidential source, or undercover agent.

The House Committee of the Whole amended the bill to restore language that was struck inadvertently, which requires probable cause affidavits and sworn testimony supporting search warrants to be made available to the defendant or the defendant's counsel for such disposition as either may desire.

In the Senate Judiciary Committee, Representative Rubin; representatives of the Kansas Press Association, Kansas Association of Broadcasters, Kansas Sunshine Coalition for Open Government, and Salina Journal; a law professor; and concerned citizens appeared in support of the bill. Representatives of the Kansas Association of Chiefs of Police, Kansas Association of Criminal Defense Lawyers, Kansas County and District Attorneys Association, Kansas Peace Officers Association, and Kansas Sheriffs Association appeared as opponents of the bill.

The Senate Committee amended the bill to strike language that would have made affidavits and sworn testimony in support of an arrest warrant public records after execution. Instead, the Committee added a process to allow a person to seek a written order of the court to examine such documents. For search warrants, the Committee added a requirement that affidavits and testimony be made available to persons searched and possessors of property searched pursuant to a warrant and added a process to allow a person to file a request for disclosure of affidavits and testimony.

The fiscal note prepared by the Division of the Budget states the bill, as introduced, would affect criminal prosecutors within the Office of the Attorney General as they would be required to determine whether to omit, request certain information be redacted, or request the affidavit be sealed; however, the precise fiscal impact is unknown. Additionally, judges would be required to redact information from affidavits and testimony offered, along with weighing the validity of a prosecutor's request to seal certain affidavits and testimony. This will increase the time judicial and non-judicial personnel would spend processing, researching, and hearing cases; however, the precise fiscal impact is unknown.