

SESSION OF 2014

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2389**

As Agreed to May 1, 2014

Brief*

Senate Sub. for HB 2389 would amend law related to disclosure of probable cause affidavits or sworn testimony supporting search or arrest warrants, as well as law related to the statutory speedy trial deadline and the automatic stay of a mandate in certain appeals. Finally, the bill would make technical corrections to language already passed in 2014 legislation.

***Probable Cause Affidavit and Sworn Testimony
Disclosure***

The bill 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," and replaces it with "sworn testimony." Additionally, for a warrant or summons executed on or after July 1, 2014, the bill would provide probable cause affidavits or sworn testimony would not be open to the public until the warrant or summons has been executed.

Similarly, the bill would amend the law concerning probable cause affidavits and sworn testimony used in support of search warrants and search warrants for tracking

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devices. For search warrants executed on or after July 1, 2014, the bill would provide probable cause affidavits or sworn testimony would not be open to the public until the warrant or summons has been executed.

Once executed, such affidavits or sworn testimony would be made available to any person, when requested, in accordance with the requirements outlined in the bill. (The affidavits and sworn testimony would continue to be made available to the defendant or the defendant's counsel upon request, for such disposition as either may desire, as under current law.) The bill would allow any person to file a request with the clerk of the court for disclosure of affidavits or sworn testimony. Within five business days of receiving notice of such request, the defendant, defendant's counsel, and prosecutor could submit a request to the magistrate under seal that the court either redact specified provisions of the affidavit or sworn testimony or seal the documents. The request would include the reasons for such proposed redactions or seal. The magistrate would review the request and would make appropriate redactions, or seal the affidavits or sworn testimony, as necessary to prevent public disclosure of information that would:

- Jeopardize the safety or well being of a victim, witness, confidential source, or undercover agent, or cause the destruction of evidence;
- Reveal information obtained from a court-ordered wiretap or search warrant for a tracking device that has not expired;
- Interfere with any prospective law enforcement action, criminal investigation, or prosecution;
- Reveal the identity of any confidential source or undercover agent;
- Reveal confidential investigative techniques or procedures not known to the general public;

- Endanger the life or physical safety of any person;
- Reveal the name, address, or telephone 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 date of birth, business or 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.

Within five business days of receiving the request to redact or seal from the defendant, the defendant's counsel, or the prosecutor, or within ten business days after receiving notice of a request for disclosure, whichever is earlier, the magistrate would either order disclosure of the affidavits or sworn testimony with appropriate redactions, if any; or order the affidavits or sworn testimony sealed and not subject to public disclosure.

Statutory Speedy Trial Deadline

The bill would amend the criminal code to raise the statutory speedy trial deadline for a defendant held in jail from 90 days to 150 days after arraignment.

Stay of Appellate Mandate

The bill would amend the statutes governing criminal appeals to provide that the issuance of the mandate from the appellate court in criminal and related appeals would be automatically stayed when a party files notice that it intends to petition the U.S. Supreme Court for a writ of *certiorari* and the time to file such petition has not expired. Any mandate

issued before a party files such notice would be withdrawn and stayed. The stay would be lifted if the petition for writ of *certiorari* is denied, upon the Supreme Court's final order after granting such petition, or once the time has expired for filing such petition and no petition has been filed.

Technical Corrections

The bill would make technical corrections to statutory references contained in SB 256, previously passed by the 2014 Legislature, with regard to the crimes of mistreatment of a dependent adult and mistreatment of an elder person. The bill also would make a technical correction to a culpability amendment to the Kansas RICO Act contained in SB 256.

Conference Committee Action

The Conference Committee agreed to delete the contents of Senate Sub. for HB 2389, as it entered committee (relating to procedures for death penalty appeals and collateral motions attacking a prisoner's sentence), and replace it with language regarding the disclosure of probable cause affidavits and sworn testimony supporting search and arrest warrants representing a compromise between the House and Senate versions of HB 2555, as follows:

- Adopt the House position that affidavits or sworn testimony supporting search warrants shall be open to the public, subject to the requirements established in the bill, after the execution of the warrant or summons. The Conference Committee also extended this position to arrest warrants;
- Modify the procedure established in the Senate version of the bill for request of disclosure of affidavits or sworn testimony supporting search warrants by: eliminating the 14-day delay after warrant execution; reducing the time for

prosecutorial response to the request from seven to five days and allowing the defense to respond to the request within the same time period; eliminating a specific standard for magistrate review of materials related to the disclosure; using the House version's list of information justifying redaction or sealing and adding "date of birth;" and requiring the magistrate to order disclosure with appropriate redactions or sealing within five business days of receiving a response from the prosecution or defense or within ten business days of receiving notice of the request for disclosure, whichever is earlier;

- Apply the previous procedure to requests for disclosure of affidavits or sworn testimony supporting arrest warrants, as well as search warrants; and
- Establish that the new disclosure procedures would apply only to material supporting a warrant or summons executed on or after July 1, 2014.

The Conference Committee further agreed to add the contents of SB 312, as passed by the Senate, regarding the speedy trial deadline and the stay of certain appellate mandates.

Finally, the Conference Committee agreed to make technical corrections to language previously passed in SB 256.

Background

As introduced by the 2013 House Committee on Federal and State Affairs and recommended by the 2013 House Committee on Corrections and Juvenile Justice, HB 2389 would have amended law concerning notice of intent to seek the death penalty. The original provisions were incorporated

into the conference committee report on Senate Sub. for HB 2043 and were enacted in 2013.

The 2014 Senate Committee on Judiciary recommended a substitute bill be passed, containing language modified from SB 257 amending procedures for death penalty appeals and collateral motions attacking a prisoner's sentence

Background of HB 2555

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 HB 2555. 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 well being 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.

The fiscal note prepared by the Division of the Budget states HB 2555, 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.

Background of SB 312

Under current law, any person charged with a crime and held in jail must be brought to trial within 90 days after arraignment, or else the person is entitled to be discharged without liability for the crime charged, unless the delay is caused by the defendant or the court orders a continuance for certain acceptable reasons.

SB 312 was introduced by the Senate Committee on Judiciary at the request of Senator King. In the Senate Committee, a representative of the Kansas County and District Attorneys Association testified in support of the bill. A representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association also testified in support. A representative of the Attorney General's Office provided written testimony supporting the bill. A representative of the Kansas Association of Counties and a law professor testified as neutral conferees. A representative of the Kansas Association of Criminal Defense Lawyers submitted written testimony opposing the bill.

The Senate Committee amended the bill to make the stay for a petition of writ of *certiorari* applicable when a notice is filed by any party, rather than applying such stay only when a notice is filed by the State.

According to the fiscal note prepared by the Division of the Budget on SB 312, as introduced, the Office of Judicial Administration indicates the bill may alleviate some scheduling difficulties for district courts and could increase local government expenditures as criminal defendants could remain in jail for longer periods of time. Any fiscal effect associated with the bill is not reflected in *The FY 2015 Governor's Budget Report*.

arrest warrants; search warrants; probable cause affidavits; disclosure; speedy trial; stay for writ of certiorari; mistreatment of a dependent adult (technical fix); mistreatment of an elder person (technical fix); Kansas RICO Act (technical fix)

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