

Substitute for HOUSE BILL No. 2017

AN ACT concerning criminal procedure; relating to appeals from municipal court; appeals from a district magistrate judge; use of tracking devices by law enforcement; search warrants; sexually violent crimes; law enforcement reports on the presence of pornographic materials; amending K.S.A. 12-4601, 22-2503 and 22-2506 and K.S.A. 2012 Supp. 22-2502, 22-3609 and 22-3609a and repealing the existing sections.

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

Section 1. K.S.A. 12-4601 is hereby amended to read as follows: 12-4601. An appeal may be taken to the district court in the county in which said municipal court is located:

- (a) By the accused person in all cases; and
- (b) By the city upon questions of law.

The appeal shall stay all further proceedings upon the judgment appealed from. *No appeal shall be filed until after the sentence has been imposed.*

Sec. 2. K.S.A. 2012 Supp. 22-2502 is hereby amended to read as follows: 22-2502. (a) A search warrant shall be issued only upon the oral or written statement, including those conveyed or received by electronic communication, of any person under oath or affirmation which states facts sufficient to show probable cause that a crime has been ~~or~~, is being *or is about to be* committed and which particularly describes a person, place or means of conveyance to be searched and things to be seized. Any statement which is made orally shall be either taken down by a certified shorthand reporter, sworn to under oath and made part of the application for a search warrant, or recorded before the magistrate from whom the search warrant is requested and sworn to under oath. Any statement orally made shall be reduced to writing as soon thereafter as possible. If the magistrate is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, the magistrate may issue a search warrant for:

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

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

~~(2)~~(B) any person who has been kidnapped in violation of the laws of this state or who has been kidnapped in another jurisdiction and is now concealed within this state;

~~(3)~~(C) any human fetus or human corpse;

~~(4)~~(D) any person for whom a valid felony arrest warrant has been issued in this state or in another jurisdiction;

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

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

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

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

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

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

~~(b)~~(c) Before ruling on a request for a search warrant, the magistrate

may require the affiant to appear personally and may examine under oath the affiant and any witnesses that the affiant may produce. Such proceeding shall be taken down by a certified shorthand reporter or recording equipment and made part of the application for a search warrant.

~~(c)~~(d) Affidavits or sworn testimony in support of the probable cause requirement of this section *or search warrants for tracking devices* shall not be made available for examination without a written order of the court, except that such affidavits or testimony when requested shall be made available to the defendant or the defendant's counsel for such disposition as either may desire.

~~(d)~~(e) As used in this section: (1) "Electronic communication" means the use of electronic equipment to send or transfer a copy of an original document; ~~and~~

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

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

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

~~(e)~~(f) Nothing in this section shall be construed as requiring a search warrant for cellular location information in an emergency situation pursuant to K.S.A. 22-4615, and amendments thereto.

Sec. 3. K.S.A. 22-2503 is hereby amended to read as follows: 22-2503. (a) *Except as provided in subsection (b), search warrants issued by a district magistrate judge may be executed only within the judicial district in which ~~said~~ the judge resides or within the judicial district to which ~~said~~ the judge has been assigned pursuant to K.S.A. 20-319, and amendments thereto.*

(b) *Search warrants issued pursuant to subsection (a)(2) of K.S.A. 22-2502, and amendments thereto:*

(1) *That are issued by a district judge may be executed anywhere within the state; and*

(2) *shall be valid during the time period specified by the warrant regardless of whether the tracking device or the subject person or property leaves the issuing jurisdiction.*

(c) *As used in this section, "tracking data" and "tracking device" have the same meanings as defined in K.S.A. 22-2502, and amendments thereto.*

Sec. 4. K.S.A. 22-2506 is hereby amended to read as follows: 22-2506.

(a) A search warrant shall be executed within ~~ninety-six~~ 96 hours from the time of issuance. If the warrant is executed the duplicate copy shall be left with any person from whom any things are seized or if no person is available the copy shall be left at the place from which the things were seized. Any warrant not executed within such time shall be void and shall be returned to the court of the magistrate issuing the same as "not executed."

(b) (1) *A search warrant for a tracking device issued pursuant to subsection (a)(2) of K.S.A. 22-2502, and amendments thereto, shall be sealed by the court and no copy left or served except as discovery in a criminal prosecution.*

(2) *The law enforcement officer executing a search warrant issued pursuant to subsection (a)(2) of K.S.A. 22-2502, and amendments thereto, shall complete the installation of the tracking device within 15 days from the date of issuance. Such officer shall record on such warrant the exact date and time such tracking device was installed and the entire period during which such tracking device was used.*

(3) (A) *A tracking device shall be deactivated and removed as soon as practicable after the search warrant has expired. If removal of such tracking device is not possible, such tracking device shall be deactivated and shall not be reactivated without an additional warrant or extension of the original warrant and the search warrant return shall state the reasons removal has not been completed.*

(B) *A tracking device which has been deactivated may be accessed after the authorized warrant has expired solely for the purpose of col-*

lecting or retrieving tracking data obtained during the period specified by the search warrant.

(c) *As used in this section:*

(1) *“Deactivate” means to discontinue the ability of a tracking device to determine or track the position or movement of a person or object; and*

(2) *“tracking data” and “tracking device” have the same meanings as defined in K.S.A. 22-2502, and amendments thereto.*

Sec. 5. K.S.A. 2012 Supp. 22-3609 is hereby amended to read as follows: 22-3609. (1) The defendant shall have the right to appeal to the district court of the county from any judgment of a municipal court which adjudges the defendant guilty of a violation of the ordinances of any municipality of Kansas or any findings of contempt. The appeal shall be assigned by the chief judge to a district judge. The appeal shall stay all further proceedings upon the judgment appealed from.

(2) An appeal to the district court shall be taken by filing, in the district court of the county in which the municipal court is located, a notice of appeal and any appearance bond required by the municipal court. Municipal court clerks are hereby authorized to accept notices of appeal and appearance bonds under this subsection and shall forward such notices and bonds to the district court. *No appeal shall be filed until after the sentence has been imposed.* No appeal shall be taken more than 14 days after the date of the judgment appealed from ~~the sentence is imposed.~~

(3) The notice of appeal shall designate the judgment or part of the judgment appealed from. The defendant shall cause notice of the appeal to be served upon the city attorney prosecuting the case. The judge whose judgment is appealed from or the clerk of the court, if there is one, shall certify the complaint and warrant to the district court of the county, but failure to do so shall not affect the validity of the appeal.

(4) Except as provided herein, the trial of municipal appeal cases shall be to the court unless a jury trial is requested in writing by the defendant not later than seven days after first notice of trial assignment is given to the defendant or such defendant’s counsel. The time requirement provided in this subsection regarding when a jury trial shall be requested may be waived in the discretion of the court upon a finding that imposing such time requirement would cause undue hardship or prejudice to the defendant. A jury in a municipal appeal case shall consist of six members. All appeals taken by a defendant from a municipal judge in contempt findings, cigarette or tobacco infraction or traffic infraction cases shall be tried by the court.

(5) Notwithstanding the other provisions of this section, appeal from a conviction rendered pursuant to subsection (b) of K.S.A. 12-4416, and amendments thereto, shall be conducted only on the record of the stipulation of facts relating to the complaint.

Sec. 6. K.S.A. 2012 Supp. 22-3609a is hereby amended to read as follows: 22-3609a. (1) A defendant shall have the right to appeal from any judgment of a district magistrate judge. The chief judge shall be responsible for assigning a district judge for any such appeal. The appeal shall stay all further proceedings upon the judgment appealed from.

(2) An appeal to a district judge shall be taken by filing a notice of appeal with the clerk of the court. *No appeal shall be filed until after the sentence has been imposed.* No appeal shall be taken more than 14 days after the date of the judgment appealed from ~~the sentence is imposed.~~

(3) The clerk of the district court shall deliver the complaint, warrant and any appearance bond to the district judge to whom such appeal is assigned. The case shall be tried de novo before the assigned district judge.

(4) No advance payment of a docket fee shall be required when the appeal is taken.

(5) All appeals taken by a defendant from a district magistrate judge in misdemeanor cases shall be tried by the court unless a jury trial is requested in writing by the defendant. All appeals taken by a defendant from a district magistrate judge in traffic infraction and cigarette or tobacco infraction cases shall be to the court.

(6) Notwithstanding the other provisions of this section, appeal from a conviction rendered pursuant to subsection (c) of K.S.A. 22-2909, and

amendments thereto, shall be conducted only on the record of the stipulation of facts relating to the complaint.

New Sec. 7. (a) As used in this section:

(1) “Nudity” means the showing, unclothed or with less than a fully opaque covering, of the human male or female genitals, pubic area, buttocks or female breast below a point immediately above the top of the areola.

(2) “Pornographic materials” means sexual devices or books, magazines, periodicals or other printed matter, photographs, films, motion pictures, video presentations, computer-generated images or pictures, slides or other visual representations, whether made or produced by electronic, mechanical or other means, which depict, describe or simulate sexually explicit conduct or nudity.

(3) “Sexually explicit conduct” means acts of masturbation, sexual intercourse, sodomy, sadomasochistic abuse or physical contact with a person’s clothed or unclothed genitals, pubic area or buttocks or with a human female’s breast.

(4) “Sexually violent crime” means the same as in K.S.A. 22-4902, and amendments thereto.

(b) The Kansas bureau of investigation will work with the office of the attorney general and with state and local law enforcement to identify a process to uniformly report data to the central repository enabling the production of a report generated at least annually to identify the total number of sexually violent crimes reported and the number of such crimes where pornographic materials are seized or documented as evidence. This process shall be in place within one year of the implementation of a capable central repository system.

(c) Reports of materials found pursuant to the provisions of subsection (b) shall be used for statistical purposes only.

(d) Upon implementation of a central repository system, the Kansas bureau of investigation shall:

(1) Make the necessary changes to the Kansas standard offense report and the Kansas incident based reporting system handbook; and

(2) promulgate rules and regulations concerning the training for law enforcement agencies to implement the provisions of this section.

(e) Nothing in this section shall be construed to expand the scope of the officer’s search.

(f) The provisions of this section are subject to appropriations.

Sec. 8. K.S.A. 12-4601, 22-2503 and 22-2506 and K.S.A. 2012 Supp. 22-2502, 22-3609 and 22-3609a are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.