

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. ~~(+)~~ (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: ~~(+)~~ (1) The prosecuting attorney so requests; or ~~(+)~~ (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

1 *prosecuting attorney requests the seal.*

2 *(d) The magistrate, at the time of issuing a warrant or summons,*
3 *shall redact information from the affidavits or sworn testimony in support*
4 *of the probable cause requirement of this section that would:*

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

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

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

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

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

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

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

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

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

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

42 (B) any person who has been kidnapped in violation of the laws of
43 this state or who has been kidnapped in another jurisdiction and is now

1 concealed within this state;

2 (C) any human fetus or human corpse;

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

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

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

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

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

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

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

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

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

38 (2) ~~Except as provided in subsections (e) and (f), the affidavits or~~
39 ~~sworn testimony, when requested, shall be made available to the defendant~~
40 ~~or the defendant's counsel for such disposition as either may desire 30~~
41 ~~days after the warrant has been executed to:~~

42 (A) **{The defendant or the defendant's counsel for such disposition**
43 **as either may desire;}**

1 **{(B)}** any person searched pursuant to such warrant{, **30 days after**
2 **the warrant has been executed**}; and

3 ~~{(B)}~~ **{(C)}** any owner or person in possession of the place or means of
4 conveyance searched pursuant to such warrant{, **30 days after the**
5 **warrant has been executed**}.

6 (e) The prosecuting attorney may request that the magistrate, at the
7 time of issuing a search warrant, or at any time within 29 days after the
8 warrant has been executed, seal the affidavits or sworn testimony in
9 support of the probable cause requirement of this section. The magistrate
10 may order affidavits or sworn testimony sealed if the prosecuting attorney
11 establishes a compelling state interest in that:

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

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

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

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

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

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

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

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

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

33 (7) reveal any personal telephone number, driver's license number,
34 nondriver's identification number, social security number, employee
35 identification number, taxpayer identification number, vehicle
36 identification number or financial account information.

37 ~~(e)~~ (f) As used in this section:

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

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

43 (3) "tracking data" means information gathered or recorded by a

1 tracking device; and

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

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

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

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