

Search and Arrest Warrants—Disclosure of Probable Cause Affidavits or Sworn Testimony; Speedy Trial Deadline; Criminal Appeals—Stay of Appellate Mandate; Technical Corrections—Mistreatment of a Dependent Adult, Mistreatment of an Elder Person, Kansas RICO Act; Senate Sub. for HB 2389

Senate Sub. for HB 2389 amends 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 makes technical corrections to language previously passed in 2014 legislation.

Probable Cause Affidavit and Sworn Testimony Disclosure

The bill amends the law concerning affidavits and sworn testimony used in support of the probable cause requirement for warrants. Specifically, the bill strikes 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, probable cause affidavits or sworn testimony will not be open to the public until the warrant or summons has been executed.

Similarly, the bill amends the law concerning probable cause affidavits and sworn testimony used in support of search warrants and search warrants for tracking devices. For search warrants executed on or after July 1, 2014, probable cause affidavits or sworn testimony will not be open to the public until the warrant or summons has been executed.

Once executed, such affidavits or sworn testimony are to be made available to any person, when requested, in accordance with the requirements outlined in the bill. (The affidavits and sworn testimony will continue to be made available to the defendant or the defendant’s counsel upon request, for such disposition as either may desire, as under previous law.) The bill allows 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 may 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 shall include the reasons for such proposed redactions or seal. The magistrate shall review the request and shall make appropriate redactions or seal the affidavits or sworn testimony, as necessary to prevent public disclosure of information that could result in any of the following:

- Jeopardizing the safety or well being of a victim, witness, confidential source, or undercover agent, or cause the destruction of evidence;
- Revealing information obtained from a court-ordered wiretap or search warrant for a tracking device that has not expired;
- Interfering with any prospective law enforcement action, criminal investigation, or prosecution;
- Revealing the identity of any confidential source or undercover agent;

- Revealing confidential investigative techniques or procedures not known to the general public;
- Endangering the life or physical safety of any person;
- Revealing the name, address, or telephone number or any other information that specifically and individually identifies the victim of a sex offense;
- Revealing the name of any minor; or
- Revealing 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 shall 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 amends the criminal code to lengthen 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 amends the statutes governing criminal appeals to provide that the issuance of the mandate from the appellate court in criminal and related appeals shall 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 shall be withdrawn and stayed. The stay shall 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 makes 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 makes a technical correction to a culpability amendment to the Kansas RICO Act contained in SB 256.