

SESSION OF 2014

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2555

As Amended by House Committee of the Whole

Brief*

HB 2555 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 strike language prohibiting probable cause affidavits and sworn testimony used in support of arrest warrants and summons from being made available for examination without a written order of the court, except when requested by the defendant or defendant's counsel. Instead, the bill would provide affidavits and sworn testimony would not be open to the public until the warrant or summons has been executed and, once executed, would be public court records.

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 devices. The bill would require the affidavits and sworn testimony to be made available 30 days after the warrant has been executed to any person searched pursuant to such warrant and any owner or person in possession of the place or means of conveyance searched pursuant to such warrant.

Exceptions would be included for both arrest warrants and search warrants allowing a magistrate to seal the affidavits or sworn testimony upon the request of the prosecuting attorney, if the prosecuting attorney establishes a compelling state interest that public disclosure of the affidavits or sworn testimony would jeopardize the safety or

*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>

well being of a victim, witness, confidential source, or undercover agent, or cause the destruction of evidence, or the affidavits or sworn testimony contain information obtained from a court-ordered wiretap that has not expired at the time when the seal is requested.

Further, the bill would require a magistrate to redact information from the affidavits or sworn testimony that would:

- 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 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.

For arrest warrants, sealing and redacting of the affidavits or sworn testimony would occur at the time of issuing the warrant or summons. For search warrants, sealing and redacting also could occur within 29 days after the warrant has been executed.

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 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 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.