

As Amended by House Committee

Session of 2015

HOUSE BILL No. 2048

By 2014 Special Committee on Judiciary

1-20

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to search warrants; amending K.S.A. 2014 Supp. 22-2502 and  
3 repealing the existing section.

4  
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2014 Supp. 22-2502 is hereby amended to read as  
7 follows: 22-2502.(a) A search warrant shall be issued only upon the oral or  
8 written statement, including those conveyed or received by electronic  
9 communication, of any person under oath or affirmation which states facts  
10 sufficient to show probable cause that a crime has been, is being or is  
11 about to be committed and which particularly describes a person, place or  
12 means of conveyance to be searched and things to be seized. Any  
13 statement which is made orally shall be either taken down by a certified  
14 shorthand reporter, sworn to under oath and made part of the application  
15 for a search warrant, or recorded before the magistrate from whom the  
16 search warrant is requested and sworn to under oath. Any statement orally  
17 made shall be reduced to writing as soon thereafter as possible. If the  
18 magistrate is satisfied that grounds for the application exist or that there is  
19 probable cause to believe that they exist, the magistrate may issue a search  
20 warrant for:

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

22 (A) ~~Any thing which has been used in the commission of a crime, or~~  
23 ~~any contraband or any property which constitutes or may be considered a~~  
24 ~~part of the evidence, fruits or instrumentalities of a crime under the laws of~~  
25 ~~this state, any other state or of the United States. The term "fruits" as used~~  
26 ~~in this act shall be interpreted to include any property into which the thing~~  
27 ~~or things unlawfully taken or possessed may have been converted~~ *Any*  
28 *item that can be seized under the fourth amendment to the United States*  
29 *constitution* **Any thing which has been used in the commission of a**  
30 **crime, or any contraband or any property which constitutes or may be**  
31 **considered a part of the evidence, fruits or instrumentalities of a crime**  
32 **under the laws of this state, any other state or of the United States.**  
33 **The term "fruits" as used in this act shall be interpreted to include**  
34 **any property into which the thing or things unlawfully taken or**  
35 **possessed may have been converted;**

36 (B) any person who has been kidnapped in violation of the laws of

1 this state or who has been kidnapped in another jurisdiction and is now  
2 concealed within this state;

3 (C) any human fetus or human corpse;

4 **(D) any biological material, DNA, cellular material, blood, hair or**  
5 **fingerprints;**

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

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

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

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

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

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

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

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

37 (d) For a warrant executed prior to July 1, 2014, affidavits or sworn  
38 testimony in support of the probable cause requirement of this section or  
39 search warrants for tracking devices shall not be made available for  
40 examination without a written order of the court, except that such  
41 affidavits or testimony when requested shall be made available to the  
42 defendant or the defendant's counsel for such disposition as either may  
43 desire.

1 (e) (1) For a warrant executed on or after July 1, 2014, affidavits or  
2 sworn testimony in support of the probable cause requirement of this  
3 section or search warrants for tracking devices shall not be open to the  
4 public until the warrant has been executed. After the warrant has been  
5 executed, such affidavits or sworn testimony shall be made available to:

6 (A) The defendant or the defendant's counsel, when requested, for  
7 such disposition as either may desire; and

8 (B) any person, when requested, in accordance with the requirements  
9 of this subsection.

10 (2) Any person may request that affidavits or sworn testimony be  
11 disclosed by filing such request with the clerk of the court. The clerk of the  
12 court shall promptly notify the defendant or the defendant's counsel, the  
13 prosecutor and the magistrate that such request was filed.

14 (3) Within five business days after receiving notice of a request for  
15 disclosure from the clerk of the court, the defendant or the defendant's  
16 counsel and the prosecutor may submit to the magistrate, under seal,  
17 either:

18 (A) Proposed redactions, if any, to the affidavits or sworn testimony  
19 and the reasons supporting such proposed redactions; or

20 (B) a motion to seal the affidavits or sworn testimony and the reasons  
21 supporting such proposed seal.

22 (4) The magistrate shall review the requested affidavits or sworn  
23 testimony and any proposed redactions or motion to seal submitted by the  
24 defendant, the defendant's counsel or the prosecutor. The magistrate shall  
25 make appropriate redactions, or seal the affidavits or sworn testimony, as  
26 necessary to prevent public disclosure of information that would:

27 (A) Jeopardize the safety or well being of a victim, witness,  
28 confidential source or undercover agent, or cause the destruction of  
29 evidence;

30 (B) reveal information obtained from a court-ordered wiretap or from  
31 a search warrant for a tracking device that has not expired;

32 (C) interfere with any prospective law enforcement action, criminal  
33 investigation or prosecution;

34 (D) reveal the identity of any confidential source or undercover agent;

35 (E) reveal confidential investigative techniques or procedures not  
36 known to the general public;

37 (F) endanger the life or physical safety of any person;

38 (G) reveal the name, address, telephone number or any other  
39 information which specifically and individually identifies the victim of any  
40 sexual offense described in article 35 of chapter 21 of the Kansas Statutes  
41 Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas  
42 Statutes Annotated or K.S.A. 2014 Supp. 21-6419 through 21-6422, and  
43 amendments thereto;

1 (H) reveal the name of any minor; or

2 (I) reveal any date of birth, personal or business telephone number,  
3 driver's license number, nondriver's identification number, social security  
4 number, employee identification number, taxpayer identification number,  
5 vehicle identification number or financial account information.

6 (5) Within five business days after receiving proposed redactions or a  
7 motion to seal from the defendant, the defendant's counsel or the  
8 prosecutor, or within 10 business days after receiving notice of a request  
9 for disclosure, whichever is earlier, the magistrate shall either:

10 (A) Order disclosure of the affidavits or sworn testimony with  
11 appropriate redactions, if any; or

12 (B) order the affidavits or sworn testimony sealed and not subject to  
13 public disclosure.

14 (f) As used in this section:

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

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

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

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

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

30 Sec. 2. K.S.A. 2014 Supp. 22-2502 is hereby repealed.

31 Sec. 3. This act shall take effect and be in force from and after its  
32 publication in the statute book.