

Arrest Warrants

Description of Amendments to KSA 22-2302 by 2014 Session Law Chapter 139 (HB2389) §3 effective July 1, 2014, by subsection.

K.S.A. 22-2302

- (a) Continues to provide the court may find probable cause to issue an arrest warrant based on the complaint but deletes “or from other evidence” replacing it with “or from sworn testimony”
- (b) Retains the current rules for release of an affidavit for an arrest warrant or summons executed prior to July 1, 2014, by “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.”
- (c)(1) Creates the new rules for release of the affidavits or sworn testimony for an arrest warrant or summons executed on or after July 1, 2014. Affidavits and sworn testimony for arrest warrants are not open to the public until the warrant or summons has been executed. After the arrest warrant or summons has been executed the provision allowing the affidavit and sworn testimony to be available “to the defendant or the defendant’s counsel, when requested, for such disposition as either may desire” remains unchanged.
- (c)(2) The affidavit for an arrest warrant is also available to anyone upon request through the court clerk, if approved by the court at the conclusion of the following process. The clerk of the court notifies the defendant or the defendant’s counsel, the prosecutor and the magistrate that the request was filed.
- (c)(3) The prosecutor and the defense has five business days after receiving notice from the clerk to provide the court with any proposed redactions or a request to seal the affidavit or sworn testimony, including the reasons for each redaction or the request to seal. The submission by the prosecutor or defense is sealed and not open to the public.
- (c)(4) The court must review the affidavit and sworn testimony along with the recommendations received from the prosecution and defense to determine if the information meeting the following criteria is to be redacted or cause to seal the affidavit and sworn testimony.
 - (A) Jeopardize the safety or well being of a victim, witness, confidential source or undercover agent, or cause the destruction of evidence;
 - (B) reveal information obtained from a court-ordered wiretap or from a search warrant for a tracking device that has not expired;
 - (C) interfere with any prospective law enforcement action, criminal investigation or prosecution;
 - (D) reveal the identity of any confidential source or undercover agent;
 - (E) reveal confidential investigative techniques or procedures not known to the general public;
 - (F) endanger the life or physical safety of any person;
 - (G) reveal the name, address, telephone number or any other information which specifically and individually identifies the victim of any sexual offense described in article 35 of

chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated or K.S.A. 2013 Supp. 21-6419 through 21-6422, and amendments thereto;

(H) reveal the name of any minor; or

(I) reveal any date of birth, personal or business 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.

(c)(5) Starting at the end of five business days or upon receipt of the response from both the prosecution and the defense, the court has five business days to take one of the following actions: 1) release the material without redaction, 2) released the material with redactions, or 3) seal the information. While the prosecution and defense are required to offer any proposed redactions, the court is ultimately responsible for the redactions. The statute is silent on whether the court may add redactions not recommended by the prosecution or defense, so presumably they would have that authority provided it met the listed criteria. The court is not required to use all recommended redactions, and could potentially rule a proposed redaction does not meet the statutory requirements.

NOTE: Law enforcement is not directly in the statutory process for suggesting redactions or sealing of the information. Our input into the redaction/seal request is through the prosecutor. The statute does not require the prosecutor to seek law enforcement input, although surely most will. This makes it incumbent on law enforcement to work out a process with your prosecutor(s) for seeking law enforcement input on proposed redactions or reasons for sealing the information.

Search Warrants

Description of Amendments to KSA 22-2502 by 2014 Session Law Chapter 139 (HB2389) §4 effective July 1, 2014, by subsection

K.S.A. 22-2502

- (a) This subsection contains the criteria for obtaining a search warrant and was not amended.
- (b) This subsection contains the provisions for tracking device warrants and was not amended.
- (c) This subsection provides the court may require, and the procedures for, the affiant and any witnesses brought by the affiant to appear personally and be examined under oath by the court.
- (d) Retains the current rules for release of an affidavit or sworn testimony for a search warrant executed prior to July 1, 2014, by "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."
- (e)(1) Creates the new rules for release of the affidavits for a search warrant executed on or after July 1, 2014. Search warrant affidavits and sworn testimony are not open to the public until the warrant or summons has been executed. After the warrant or summons has been executed they continue to "be made available to the defendant or the defendant's counsel, when requested, for such disposition as either may desire without any change."
- (e)(2) Search warrant affidavits and sworn testimony are also available to anyone upon request through the court clerk, if approved by the court at the conclusion of the following process. The clerk of the court notifies the defendant or the defendant's counsel, the prosecutor and the magistrate that the request was filed.
- (e)(3) The prosecutor and the defense has five business days after receiving notice from the clerk to provide the court with any proposed redactions or a request to seal the affidavit or sworn testimony, including the reasons for each redaction or the request to seal.
- (e)(4) The court must review the affidavit and sworn testimony along with the recommendations received from the prosecution and defense to determine if the information meeting the following criteria is to be redacted or cause to seal the affidavit or sworn testimony.
 - (A) Jeopardize the safety or well being of a victim, witness, confidential source or undercover agent, or cause the destruction of evidence;
 - (B) reveal information obtained from a court-ordered wiretap or from a search warrant for a tracking device that has not expired;
 - (C) interfere with any prospective law enforcement action, criminal investigation or prosecution;
 - (D) reveal the identity of any confidential source or undercover agent;
 - (E) reveal confidential investigative techniques or procedures not known to the general public;
 - (F) endanger the life or physical safety of any person;
 - (G) reveal the name, address, telephone number or any other information which specifically and individually identifies the victim of any sexual offense described in article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter

21 of the Kansas Statutes Annotated or K.S.A. 2013 Supp. 21-6419 through 21-6422, and amendments thereto;

(H) reveal the name of any minor; or

(I) reveal any date of birth, personal or business 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.

(e)(5) Starting at the end of five business days or upon receipt of the response from both the prosecution and the defense, the court has five business days to take one of the following actions: 1) release the material without redaction, 2) released the material with redactions, or 3) seal the information. While the prosecution and defense are required to offer any proposed redactions, the court is ultimately responsible for the redactions. The statute is silent on whether the court may add redactions not recommended by the prosecution or defense, so presumably they would have that authority provided it met the listed criteria. The court is not required to use all recommended redactions, and could potentially rule a proposed redaction does not meet the statutory requirements.

(f) This section contains definitions for terms used in the statute and was not amended.

(g) This section contains the provision allowing law enforcement to obtain cellular location information in an emergency situation pursuant to K.S.A. 22-4615 without a warrant and was not amended.

NOTE: Law enforcement is not directly in the statutory process for suggesting redactions or sealing of the information. Our input into the redaction/seal request is through the prosecutor. The statute does not require the prosecutor to seek law enforcement input, although surely most will. This makes it incumbent on law enforcement to work out a process with your prosecutor(s) for seeking law enforcement input on proposed redactions or reasons for sealing the information.