

As Amended by House Committee

Session of 2017

HOUSE BILL No. 2320

By Committee on Judiciary

2-8

1 AN ACT concerning criminal procedure; relating to warrants; disclosure;
2 amending K.S.A. 2016 Supp. 22-2302 and repealing the existing
3 section.
4

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

6 Section 1. K.S.A. 2016 Supp. 22-2302 is hereby amended to read as
7 follows: 22-2302. (a) If the magistrate finds from the complaint, or from
8 an affidavit or affidavits filed with the complaint or from sworn testimony,
9 that there is probable cause to believe both that a crime has been
10 committed and that the defendant has committed it, a warrant for the arrest
11 of the defendant shall issue, except that a summons instead of a warrant
12 may be issued if: (1) The prosecuting attorney so requests; or (2) in the
13 case 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 (b) For a warrant or summons executed prior to July 1, 2014,
18 affidavits or sworn testimony in support of the probable cause requirement
19 of this section shall not be made available for examination without a
20 written order of the court, except that such affidavits or testimony when
21 requested shall be made available to the defendant or the defendant's
22 counsel for such disposition as either may desire.

23 (c) (1) For a warrant or summons executed on or after July 1, 2014,
24 affidavits or sworn testimony in support of the probable cause requirement
25 of this section shall not be open to the public until the warrant or summons
26 has been executed. After the warrant or summons has been executed, such
27 affidavits or sworn testimony shall be made available to:

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

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

32 (2) Any person may request that affidavits or sworn testimony be
33 disclosed by filing such request with the clerk of the court. **Upon entry of**
34 **appearance by an attorney on behalf of the defendant, or indication by**
35 **the defendant to the court that such defendant will represent the**
36 **defendant's self**, the clerk of the court shall promptly notify the defendant

1 ~~upon indication by the defendant to the court that the defendant will~~
2 ~~represent the defendant's self~~ or the defendant's counsel ~~when there has~~
3 ~~been an entry of appearance by an attorney~~, the prosecutor and the
4 magistrate that such request was filed. The prosecutor shall promptly
5 notify any victim. For the purposes of this subsection, victim shall include
6 any victim of an alleged crime that resulted in the issuance of the arrest
7 warrant, or, if the victim is deceased, the victim's family, as defined in
8 K.S.A. 74-7335, and amendments thereto.

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

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

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

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

22 (A) Jeopardize the physical, mental or emotional safety or well-being
23 of a victim, witness, confidential source or undercover agent, or cause the
24 destruction of evidence;

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

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

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

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

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

33 (G) reveal the name, address, telephone number or any other
34 information which specifically and individually identifies the victim of any
35 sexual offense described in article 35 of chapter 21 of the Kansas Statutes
36 Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas
37 Statutes Annotated or K.S.A. 2016 Supp. 21-6419 through 21-6422, and
38 amendments thereto;

39 (H) reveal the name of any minor;

40 (I) reveal any date of birth, personal or business telephone number,
41 driver's license number, nondriver's identification number, social security
42 number, employee identification number, taxpayer identification number,
43 vehicle identification number or financial account information; or

1 (J) constitute a clearly unwarranted invasion of personal privacy. As
2 used in this subparagraph, "clearly unwarranted invasion of personal
3 privacy" means revealing information that would be highly offensive to a
4 reasonable person and is totally unrelated to the alleged crime that resulted
5 in the issuance of the arrest warrant, including information totally
6 unrelated to the alleged crime that may pose a risk to a person or property
7 and is not of legitimate concern to the public. The provisions of this
8 subparagraph shall only be used to redact and shall not be used to seal
9 affidavits or sworn testimony.

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

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

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

18 (6) (A) If the magistrate orders disclosure of the affidavits or sworn
19 testimony with appropriate redactions, if any, to any person in accordance
20 with the requirements of this subsection, then such affidavits or sworn
21 testimony shall become part of the court record and shall be accessible to
22 the public.

23 (B) If the magistrate orders the affidavits or sworn testimony sealed
24 and not subject to public disclosure in accordance with the requirements of
25 this subsection, then such affidavits or sworn testimony shall become part
26 of the court record that is not accessible to the public.

27 (C) Any request for disclosure of affidavits or sworn testimony in
28 accordance with the requirements of this subsection shall become part of
29 the court record and shall be accessible to the public, regardless of whether
30 the magistrate orders disclosure with appropriate redactions, if any, or
31 sealing of the requested affidavit or sworn testimony.

32 Sec. 2. K.S.A. 2016 Supp. 22-2302 is hereby repealed.

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