

Substitute for HOUSE BILL No. 2017

By Committee on Judiciary

2-15

1 AN ACT concerning criminal procedure; relating to appeals from  
2 municipal court; ***appeals from a district magistrate judge; use of***  
3 ***tracking devices by law enforcement; search warrants;*** amending  
4 K.S.A. 12-4601, ***22-2503 and 22-2506*** and K.S.A. 2012 Supp. ***22-***  
5 ***2502, 22-3609 and 22-3609a*** and repealing the existing sections.

6  
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 12-4601 is hereby amended to read as follows: 12-  
9 4601. An appeal may be taken to the district court in the county in which  
10 said municipal court is located:

- 11 (a) By the accused person in all cases; and  
12 (b) By the city upon questions of law.

13 The appeal shall stay all further proceedings upon the judgment  
14 appealed from. *No appeal shall be filed until after the sentence has been*  
15 *imposed.*

16 ***Sec. 2. K.S.A. 2012 Supp. 22-2502 is hereby amended to read as***  
17 ***follows: 22-2502. (a) A search warrant shall be issued only upon the oral***  
18 ***or written statement, including those conveyed or received by electronic***  
19 ***communication, of any person under oath or affirmation which states***  
20 ***facts sufficient to show probable cause that a crime has been-~~or~~, is being***  
21 ***or is about to be committed and which particularly describes a person,***  
22 ***place or means of conveyance to be searched and things to be seized.***  
23 ***Any statement which is made orally shall be either taken down by a***  
24 ***certified shorthand reporter, sworn to under oath and made part of the***  
25 ***application for a search warrant, or recorded before the magistrate from***  
26 ***whom the search warrant is requested and sworn to under oath. Any***  
27 ***statement orally made shall be reduced to writing as soon thereafter as***  
28 ***possible. If the magistrate is satisfied that grounds for the application***  
29 ***exist or that there is probable cause to believe that they exist, the***  
30 ***magistrate may issue a search warrant for:***

31 (1) *The search or seizure of the following:*

32 ~~(+)(A) Any things thing which have has been used in the~~  
33 ***commission of a crime, or any contraband or any property which***  
34 ***constitutes or may be considered a part of the evidence, fruits or***  
35 ***instrumentalities of a crime under the laws of this state, any other state***  
36 ***or of the United States. The term "fruits" as used in this act shall be***

1 *interpreted to include any property into which the thing or things*  
2 *unlawfully taken or possessed may have been converted-;*

3 ~~(2)~~(B) *any person who has been kidnapped in violation of the laws*  
4 *of this state or who has been kidnapped in another jurisdiction and is*  
5 *now concealed within this state-;*

6 ~~(3)~~(C) *any human fetus or human corpse-;*

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

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

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

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

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

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

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

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

40 ~~(e)~~ (d) *Affidavits or sworn testimony in support of the probable*  
41 *cause requirement of this section or search warrants for tracking devices*  
42 *shall not be made available for examination without a written order of*  
43 *the court, except that such affidavits or testimony when requested shall*

1 *be made available to the defendant or the defendant's counsel for such*  
2 *disposition as either may desire.*

3 ~~(d)~~ (e) *As used in this section: (1) "Electronic communication"*  
4 *means the use of electronic equipment to send or transfer a copy of an*  
5 *original document; and*

6 (2) *"electronic communication service" and "electronic*  
7 *communication system" have the meaning as defined in K.S.A. 22-2514,*  
8 *and amendments thereto;*

9 (3) *"tracking data" means information gathered or recorded by a*  
10 *tracking device; and*

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

16 ~~(e)~~ (f) *Nothing in this section shall be construed as requiring a*  
17 *search warrant for cellular location information in an emergency*  
18 *situation pursuant to K.S.A. 22-4615, and amendments thereto.*

19 **Sec. 3. K.S.A. 22-2503 is hereby amended to read as follows: 22-**  
20 **2503. (a) Except as provided in subsection (b), search warrants issued by**  
21 **a district magistrate judge may be executed only within the judicial**  
22 **district in which ~~said~~ the judge resides or within the judicial district to**  
23 **which ~~said~~ the judge has been assigned pursuant to K.S.A. 20-319, and**  
24 **amendments thereto.**

25 (b) *Search warrants issued pursuant to subsection (a)(2) of K.S.A.*  
26 *22-2502, and amendments thereto:*

27 (1) *That are issued by a district judge may be executed anywhere*  
28 *within the state; and*

29 (2) *shall be valid during the time period specified by the warrant*  
30 *regardless of whether the tracking device or the subject person or property*  
31 *leaves the issuing jurisdiction.*

32 (c) *As used in this section, "tracking data" and "tracking device"*  
33 *have the same meanings as defined in K.S.A. 22-2502, and amendments*  
34 *thereto.*

35 **Sec. 4. K.S.A. 22-2506 is hereby amended to read as follows: 22-**  
36 **2506. (a) A search warrant shall be executed within ~~ninety-six~~ 96 hours**  
37 **from the time of issuance. If the warrant is executed the duplicate copy**  
38 **shall be left with any person from whom any things are seized or if no**  
39 **person is available the copy shall be left at the place from which the**  
40 **things were seized. Any warrant not executed within such time shall be**  
41 **void and shall be returned to the court of the magistrate issuing the**  
42 **same as "not executed."**

43 (b) (1) *A search warrant for a tracking device issued pursuant to*

1 subsection (a)(2) of K.S.A. 22-2502, and amendments thereto, shall be  
2 sealed by the court and no copy left or served except as discovery in a  
3 criminal prosecution.

4 (2) The law enforcement officer executing a search warrant issued  
5 pursuant to subsection (a)(2) of K.S.A. 22-2502, and amendments thereto,  
6 shall complete the installation of the tracking device within 15 days from  
7 the date of issuance. Such officer shall record on such warrant the exact  
8 date and time such tracking device was installed and the entire period  
9 during which such tracking device was used.

10 (3) (A) A tracking device shall be deactivated and removed as soon  
11 as practicable after the search warrant has expired. If removal of such  
12 tracking device is not possible, such tracking device shall be deactivated  
13 and shall not be reactivated without an additional warrant or extension of  
14 the original warrant and the search warrant return shall state the reasons  
15 removal has not been completed.

16 (B) A tracking device which has been deactivated may be accessed  
17 after the authorized warrant has expired solely for the purpose of  
18 collecting or retrieving tracking data obtained during the period specified  
19 by the search warrant.

20 (c) As used in this section:

21 (1) "Deactivate" means to discontinue the ability of a tracking device  
22 to determine or track the position or movement of a person or object; and

23 (2) "tracking data" and "tracking device" have the same meanings as  
24 defined in K.S.A. 22-2502, and amendments thereto.

25 Sec. 5. K.S.A. 2012 Supp. 22-3609 is hereby amended to read as  
26 follows: 22-3609. (1) The defendant shall have the right to appeal to the  
27 district court of the county from any judgment of a municipal court which  
28 adjudges the defendant guilty of a violation of the ordinances of any  
29 municipality of Kansas or any findings of contempt. The appeal shall be  
30 assigned by the chief judge to a district judge. The appeal shall stay all  
31 further proceedings upon the judgment appealed from.

32 (2) An appeal to the district court shall be taken by filing, in the  
33 district court of the county in which the municipal court is located, a notice  
34 of appeal and any appearance bond required by the municipal court.  
35 Municipal court clerks are hereby authorized to accept notices of appeal  
36 and appearance bonds under this subsection and shall forward such notices  
37 and bonds to the district court. *No appeal shall be filed until after the*  
38 *sentence has been imposed.* No appeal shall be taken more than 14 days  
39 after the date of the judgment appealed from *the sentence is imposed.*

40 (3) The notice of appeal shall designate the judgment or part of the  
41 judgment appealed from. The defendant shall cause notice of the appeal to  
42 be served upon the city attorney prosecuting the case. The judge whose  
43 judgment is appealed from or the clerk of the court, if there is one, shall

1 certify the complaint and warrant to the district court of the county, but  
2 failure to do so shall not affect the validity of the appeal.

3 (4) Except as provided herein, the trial of municipal appeal cases  
4 shall be to the court unless a jury trial is requested in writing by the  
5 defendant not later than seven days after first notice of trial assignment is  
6 given to the defendant or such defendant's counsel. The time requirement  
7 provided in this subsection regarding when a jury trial shall be requested  
8 may be waived in the discretion of the court upon a finding that imposing  
9 such time requirement would cause undue hardship or prejudice to the  
10 defendant. A jury in a municipal appeal case shall consist of six members.  
11 All appeals taken by a defendant from a municipal judge in contempt  
12 findings, cigarette or tobacco infraction or traffic infraction cases shall be  
13 tried by the court.

14 (5) Notwithstanding the other provisions of this section, appeal from  
15 a conviction rendered pursuant to subsection (b) of K.S.A. 12-4416, and  
16 amendments thereto, shall be conducted only on the record of the  
17 stipulation of facts relating to the complaint.

18 ~~Sec. 6.~~ K.S.A. 2012 Supp. 22-3609a is hereby amended to read as  
19 follows: 22-3609a. (1) A defendant shall have the right to appeal from any  
20 judgment of a district magistrate judge. The chief judge shall be  
21 responsible for assigning a district judge for any such appeal. The appeal  
22 shall stay all further proceedings upon the judgment appealed from.

23 (2) An appeal to a district judge shall be taken by filing a notice of  
24 appeal with the clerk of the court. *No appeal shall be filed until after the*  
25 *sentence has been imposed.* No appeal shall be taken more than 14 days  
26 after the date of the judgment appealed from ~~the sentence is imposed.~~

27 (3) The clerk of the district court shall deliver the complaint, warrant  
28 and any appearance bond to the district judge to whom such appeal is  
29 assigned. The case shall be tried de novo before the assigned district judge.

30 (4) No advance payment of a docket fee shall be required when the  
31 appeal is taken.

32 (5) All appeals taken by a defendant from a district magistrate judge  
33 in misdemeanor cases shall be tried by the court unless a jury trial is  
34 requested in writing by the defendant. All appeals taken by a defendant  
35 from a district magistrate judge in traffic infraction and cigarette or  
36 tobacco infraction cases shall be to the court.

37 (6) Notwithstanding the other provisions of this section, appeal from  
38 a conviction rendered pursuant to subsection (c) of K.S.A. 22-2909, and  
39 amendments thereto, shall be conducted only on the record of the  
40 stipulation of facts relating to the complaint.

41 ~~Sec. 7.~~ K.S.A. 12-4601, **22-2503 and 22-2506** and K.S.A. 2012  
42 Supp. **22-2502**, 22-3609 and 22-3609a are hereby repealed.

43 ~~Sec. 8.~~ This act shall take effect and be in force from and after its

- 1 publication in the statute book.