

SESSION OF 2016

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2545**

As Agreed to April 27, 2016

Brief*

HB 2545 would amend statutory provisions governing the disclosure of affidavits or sworn testimony supporting arrest warrants and search warrants to provide that, if such affidavits or sworn testimony are disclosed pursuant to the existing provisions, then the disclosed information would become part of the court record and shall be accessible to the public. If the affidavits or sworn testimony are ordered sealed and not subject to public disclosure, then they would become part of the court record not accessible to the public. Any requests for disclosure of the affidavits or sworn testimony would become part of the court record and would be accessible to the public, regardless of whether the affidavits and sworn testimony are disclosed or sealed.

The bill also would amend the procedure for disclosure to require the prosecutor to notify any victim of an alleged crime that resulted in the issuance of the warrant (or the victim's family if the victim is deceased) of the request for disclosure. The bill would clarify the existing justification for redacting or sealing affidavits or sworn testimony that would jeopardize the safety or well being of a victim, witness, confidential source, or undercover agent, includes the physical, mental, or emotional safety of such person.

The bill would add provisions allowing a magistrate to redact affidavits and sworn testimony to prevent the

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disclosure of information that would constitute a clearly unwarranted invasion of person privacy, as defined by the bill.

Conference Committee Action

The Conference Committee agreed to the bill, as amended by the Senate Committee on Corrections and Juvenile Justice. The Conference Committee agreed further to insert additional language specifying that the justification related to a clearly unwarranted invasion of personal privacy may be used only to redact and not to seal affidavits and sworn testimony.

Background

The bill was introduced by the House Committee on Corrections and Juvenile Justice at the request of Representative Rubin. In the hearing before the House Committee, a law professor and representatives of the Kansas Association of Broadcasters and the Kansas Press Association testified in support of the bill. Written proponent testimony was submitted by a representative of the Kansas Sunshine Coalition for Open Government. A representative of the Office of Judicial Administration testified as a neutral conferee and requested an amendment clarifying how probable cause affidavits should be handled in the court record. A citizen testified as a neutral conferee and requested an amendment allowing victims to be heard before information from an affidavit is released. The Attorney General, a Lawrence police detective, and a citizen submitted written neutral testimony encouraging the Committee to amend the bill to permit the redaction of information with little or no public value that is embarrassing to victims or families.

The House Committee adopted an amendment based upon the requests of the neutral conferees. The amendment would provide for notification of victims and allow them to propose redactions or file a motion to seal, pursuant to the

existing procedure. The amendment also would clarify the status of sealed affidavits or sworn testimony in the court record.

The House Committee of the Whole amended the bill to remove the provisions added by the House Committee allowing victims to propose redactions or file a motion to seal. The amendment also would clarify the “physical, mental, or emotional” specification added to the existing safety justification applies to search warrants, as well as arrest warrants.

Before the Senate Committee on Corrections and Juvenile Justice, Representative Rubin and a citizen testified in support of the bill. A citizen, a Lawrence police detective, and representatives of the Kansas Association of Broadcasters, the Kansas Press Association, and the Kansas Sunshine Coalition for Open Government submitted written testimony supporting the bill. The Attorney General submitted written neutral testimony requesting further language be added permitting the redaction of information with little or no public value that is embarrassing to victims or families. The Senate Committee amended the bill to allow a magistrate to redact or seal affidavits or sworn testimony to prevent public disclosure of information that would constitute a clearly unwarranted invasion of person privacy and to add definitions for “clearly unwarranted invasion of personal privacy” and “family.”

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, there would be no fiscal effect on state revenues or expenditures.

arrest warrants; search warrants; affidavits; sworn testimony; disclosure; victim notification; privacy

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