

As Amended by House Committee

Session of 2013

HOUSE BILL No. 2034

By Committee on Corrections and Juvenile Justice

1-18

1 AN ACT concerning criminal procedure; relating to the use of tracking
2 devices by law enforcement; relating to search warrants; amending
3 K.S.A. 22-2503 and 22-2506 and K.S.A. 2012 Supp. 22-2502 and
4 repealing the existing sections.

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

7 Section 1. K.S.A. 2012 Supp. 22-2502 is hereby amended to read as
8 follows: 22-2502. (a) A search warrant shall be issued only upon the oral
9 or written statement, including those conveyed or received by electronic
10 communication, of any person under oath or affirmation which states facts
11 sufficient to show probable cause that a crime has been ~~or~~, is being *or is*
12 *about to be* committed and which particularly describes a person, place or
13 means of conveyance to be searched and things to be seized. Any
14 statement which is made orally shall be either taken down by a certified
15 shorthand reporter, sworn to under oath and made part of the application
16 for a search warrant, or recorded before the magistrate from whom the
17 search warrant is requested and sworn to under oath. Any statement orally
18 made shall be reduced to writing as soon thereafter as possible. If the
19 magistrate is satisfied that grounds for the application exist or that there is
20 probable cause to believe that they exist, the magistrate may issue a search
21 warrant for:

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

23 ~~(1)(A)~~ ~~Any things~~ *thing* which ~~have~~ *has* been used in the commission
24 of a crime, or any contraband or any property which constitutes or may be
25 considered a part of the evidence, fruits or instrumentalities of a crime
26 under the laws of this state, any other state or of the United States. The
27 term "fruits" as used in this act shall be interpreted to include any property
28 into which the thing or things unlawfully taken or possessed may have
29 been converted;:

30 ~~(2)(B)~~ any person who has been kidnapped in violation of the laws of
31 this state or who has been kidnapped in another jurisdiction and is now
32 concealed within this state;:

33 ~~(3)(C)~~ any human fetus or human corpse;:

34 ~~(4)(D)~~ any person for whom a valid felony arrest warrant has been
35 issued in this state or in another jurisdiction;:

36 ~~(5)(A)(E)~~ (i) any information concerning the user of an electronic

1 communication service; any information concerning the location of
2 electronic communications systems, including, but not limited to, towers
3 transmitting cellular signals involved in any wire communication; and any
4 other information made through an electronic communications system;

5 ~~(B)~~(ii) the jurisdiction granted in this paragraph shall extend to
6 information held by entities registered to do business in the state of
7 Kansas, submitting to the jurisdiction thereof, and entities primarily
8 located outside the state of Kansas if the jurisdiction in which the entity is
9 primarily located recognizes the authority of the magistrate to issue the
10 search warrant.; *or*

11 (2) ~~the covert~~ *installation, maintenance and use of a tracking device.*

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

16 (2) *The search warrant under subsection (a)(2) may authorize the*
17 *retrieval of the tracking data recorded by the tracking device during the*
18 *specified period of time for authorized use of such tracking device within a*
19 *reasonable time after the expiration of such warrant, for good cause*
20 *shown.*

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

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

29 ~~(e)~~ (d) Affidavits or sworn testimony in support of the probable cause
30 requirement of this section *or search warrants for tracking devices* shall
31 not be made available for examination without a written order of the court,
32 except that such affidavits or testimony when requested shall be made
33 available to the defendant or the defendant's counsel for such disposition
34 as either may desire.

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

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

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

43 (4) *"tracking device" means an electronic or mechanical device that*

1 *permits a person to remotely determine or track the position or movement*
2 *of a person or object. "Tracking device" includes, but is not limited to, a*
3 *device that stores geographic data for subsequent access or analysis and a*
4 *device that allows for the real-time monitoring of movement.*

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

8 *Sec. 2. K.S.A. 22-2503 is hereby amended to read as follows: 22-*
9 *2503. (a) Except as provided in subsection (b), search warrants issued by*
10 *a district magistrate judge may be executed only within the judicial district*
11 *in which ~~said~~ the judge resides or within the judicial district to which ~~said~~*
12 *the judge has been assigned pursuant to K.S.A. 20-319, and amendments*
13 *thereto.*

14 *(b) Search warrants issued pursuant to subsection (a)(2) of K.S.A.*
15 *22-2502, and amendments thereto:*

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

18 *(2) shall be valid during the time period specified by the warrant*
19 *regardless of whether the tracking device or the subject person or property*
20 *leave the issuing jurisdiction.*

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

24 *Sec. 3. K.S.A. 22-2506 is hereby amended to read as follows: 22-*
25 *2506. (a) A search warrant shall be executed within ~~ninety-six~~ 96 hours*
26 *from the time of issuance. If the warrant is executed the duplicate copy*
27 *shall be left with any person from whom any things are seized or if no*
28 *person is available the copy shall be left at the place from which the things*
29 *were seized. Any warrant not executed within such time shall be void and*
30 *shall be returned to the court of the magistrate issuing the same as "not*
31 *executed."*

32 *(b) (1) A search warrant for a tracking device issued pursuant to*
33 *subsection (a)(2) of K.S.A. 22-2502, and amendments thereto, shall be*
34 *sealed by the court and no copy left or served except as discovery in a*
35 *criminal prosecution.*

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

42 *(3) (A) A tracking device shall be deactivated and removed as soon*
43 *as practicable after the search warrant has expired. If removal of such*

1 *tracking device is not possible, such tracking device shall be deactivated*
2 *and shall not be reactivated without an additional warrant or extension of*
3 *the original warrant and the search warrant return shall state the reasons*
4 *removal has not been completed.*

5 *(B) A tracking device which has been deactivated may be accessed*
6 *after the authorized warrant has expired solely for the purpose of*
7 *collecting or retrieving tracking data obtained during the period specified*
8 *by the search warrant.*

9 *(c) As used in this section:*

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

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

14 Sec. 4. K.S.A. 22-2503 and 22-2506 and K.S.A. 2012 Supp. 22-2502
15 are hereby repealed.

16 Sec. 5. This act shall take effect and be in force from and after its
17 publication in the statute book.