

Kansas

SEARCH WARRANT GUIDE

ANTHONY BANDIERO, ESQ.

Fourth Amendment
the people to be secure in
houses, papers, and effects against
unreasonable searches and seizures, shall not
be violated, and no Warrants shall issue, but upon
probable cause, supported by Oath or affirmation,
and particularly describing the place to be searched,
and the persons or things to be seized.

Kansas Search Warrant Guide

A REFERENCE FOR LAW ENFORCEMENT



Anthony Bandiero, JD, ALM

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— Anthony Bandiero

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PART I

Common Search Warrant Questions

Application Procedure

1) Who may apply?	Any person (§ 22-2502(a))
2) Who has the authority to issue?	A magistrate (§ 22-2502(a))
3) Is an affidavit necessary?	Yes (§ 22-2502)
4) Can sworn oral testimony replace an affidavit?	Yes. If recorded by a certified shorthand reporter, sworn to, and made part of the application Must be reduced to writing as soon thereafter as is possible (§ 22-2502(a))
5) Are there special provisions for obtaining a warrant by telephone?	Yes. Issuance by electronic means (§§ 22-2502, 22-2504)
6) What property can be seized?	—Used in a crime —Contraband —Evidence, fruits, or instrumentalities of a crime —Any kidnapped person within the state

- Any human fetus or human corpse
 - Any person subject to outstanding valid felony arrest warrant
 - information concerning user of electronic communication service, location of electronic communications systems, and information made through electronic communications system
- (§ 22-2502(a))

7) Contents of application

- | | |
|--|--|
| a) Who or what is to be searched? | Yes (§ 22-2502(a)) |
| b) State the items being sought? | Yes (§ 22-2502(a)) |
| c) State the basis for probable cause? | Yes (§ 22-2502(a)) |
| d) Are there additional requirements? | Warrant for cellular location information not required in emergency situation (§§ 22-2502(e), 22-4615) |
-

The Search Warrant

- | | |
|---------------------------------------|--|
| 1) Does it require a standard format? | No |
| 2) Required contents | <ul style="list-style-type: none"> —Time of issuance —Date of issuance |
-

- Direction to executing officer
 - Person/place to be searched
 - Property to be seized
- (§§ 22-2504, 22-2507)
-

Execution of Search Warrant

1) How soon must search warrant be executed?	Within 240 hours from the time of issuance (§ 22-2506(a))
2) Who may execute?	Any law enforcement officer named in the warrant or, where no officer is named, any law enforcement officer of the state (§ 22-2505); Consolidated county law enforcement officers and sheriffs and deputies within their county (§ 22-2401a(a)(1)); Law enforcement officers employed by any city within city limits and outside city limits when property owned or under control of city (§ 22-2401a(a)(2)); Native American Indian Tribe law enforcement officers within the exterior limits of the reservation (§ 22-2401a(b)(1)); University police officers on state educational institution or municipal university property (§ 22-2401a(c)(1)); Community college or school district campus police officers on

	school or college property (§ 22-2401a(e)(1)); TAG officers employed by adjutant general on Kansas national guard or adjutant general property (§ 22-2401a(f)(1)); Horsethief reservoir benefit district officers on district property (§ 22-2401a(g)(1)); All officers not otherwise provided statewide jurisdiction when: (1) A request for assistance made by officers from the area for which assistance is requested; (2) in fresh pursuit; (3) transporting persons in custody; and (4) investigating a crime (§ 22-2401a(h))
3) Where is the search warrant applicable?	<p>Within the judicial district of the issuing district magistrate judge (§ 22-2503)</p> <p>After July 1, 2019, warrants for electronically stored information, anywhere within or outside Kansas unless otherwise specified in the warrant (§ 22-2503(c))</p>
4) When may warrant be executed?	
a) Is execution limited during daytime?	Yes (§ 22-2510)
b) Is execution limited during	Yes (§ 22-2510)



PART II

K.S.A. 22-2502

Search warrants; issuance; proceedings authorized; availability of affidavits and testimony in support of probable cause requirement; use of electronic communications and tracking devices

(a) A search warrant shall be issued only upon the oral or written statement, including those conveyed or received by electronic communication, of any person under oath or affirmation which states facts sufficient to show probable cause that a crime has been, is being or is about to be committed and which particularly describes a person, place or means of conveyance to be searched and things to be seized. Any statement which is made orally shall be either taken down by a certified shorthand reporter, sworn to under oath and made part of the application for a search warrant, or recorded before the magistrate from whom the search warrant is requested and sworn to under oath. Any statement orally made shall be reduced to writing as soon thereafter as possible. If the magistrate is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, the magistrate may issue a search warrant for:

(1) The search or seizure of the following:

(A) Anything that can be seized under the fourth amendment of the United States constitution;

(B) anything which has been used in the commission of a crime, or any contraband or any property which constitutes or may be considered a part of the evidence, fruits or instrumentalities of a crime under the laws of this state, any other state or of the United States. The term “fruits” as used in this act shall be interpreted to include any property into which the thing or things unlawfully taken or possessed may have been converted;

(C) any person who has been kidnapped in violation of the laws of this state or who has been kidnapped in another jurisdiction and is now concealed within this state;

(D) any human fetus or human corpse;

(E) any biological material, DNA, cellular material, blood, hair or fingerprints;

(F) any person for whom a valid felony arrest warrant has been issued in this state or in another jurisdiction;
or

(G)(i) any information concerning the user of an electronic communication service; any information concerning the location of electronic communications systems, including, but not limited to, towers transmitting cellular signals involved in any wire

communication; and any other information made through an electronic communications system; or

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

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

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

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

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

(c) Before ruling on a request for a search warrant, the magistrate may require the affiant to appear personally and may examine under oath the affiant and any witnesses that the affiant may produce. Such proceeding shall be taken down by a certified shorthand reporter or

recording equipment and made part of the application for a search warrant.

(d) For a warrant executed prior to July 1, 2014, affidavits or sworn testimony in support of the probable cause requirement of this section or search warrants for tracking devices shall not be made available for examination without a 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) For a warrant executed on or after July 1, 2014, affidavits or sworn testimony in support of the probable cause requirement of this section or search warrants for tracking devices shall not be open to the public until the warrant has been executed. After the warrant has been executed, such affidavits or sworn testimony shall be made available to:

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

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

(2) Any person may request that affidavits or sworn testimony be disclosed by filing such request with the clerk of the court. The clerk of the court shall promptly notify the defendant or the defendant's counsel, the prosecutor and the magistrate that such request was filed. The prosecutor shall promptly notify any victim.

(3) Within five business days after receiving notice of a request for disclosure from the clerk of the court, the



ABOUT THE AUTHOR

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Anthony is an attorney and retired law enforcement officer with experience as both a municipal police officer and sergeant with a state police agency. Anthony has studied constitutional law for over twenty years and has trained countless police officers around the nation in search and seizure.

View his bio at BlueToGold.com/about

Kansas SEARCH WARRANT GUIDE

This booklet is a straightforward and essential resource for anyone involved in writing or executing search warrants in Kansas. Consolidating relevant statutes and procedural rules and offering clear answers to common questions and addressing real-world challenges.

Designed to be a quick reference, this booklet covers key topics such as warrant application, execution, and return procedures, as well as critical provisions from the Kansas Code and Kansas Rules of Criminal Procedure. Whether clarifying authority to issue warrants, addressing defects, or ensuring compliance with execution and return requirements, this guide provides the tools you need for accuracy and legal compliance.



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