

SENATE COMMITTEE ON JUDICIARY

Hon. Rick Wilborn, Chairman
Hon. Julia Lynn, Vice Chairman
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Room 346-S

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TESTIMONY IN SUPPORT OF HB 2320

Mr. Chairman, members of the committee, thank you for the opportunity to appear before you today to discuss HB 2320. I am Jeffry Jack, District Court Judge in the Eleventh Judicial District, sitting in Parsons, Labette County.

HB 2320 is an amendment to K.S.A. 22-2302, which deals with the release to the public of sworn testimony or probable cause affidavits filed in support of arrest warrants. HB 2320 is intended to address a problem that has arisen with the timing of the release of these documents. It will not prevent or prohibit the ultimate release of these documents to the public, nor does it change the standards for their release.

As you may know, when a law enforcement agency seeks an arrest warrant, it files sworn testimony, or a probable cause affidavit, known as a PCA, with the clerk of the court. That PCA is reviewed by a district judge or magistrate, and if that judge finds that there is probable cause for an arrest, the judge issues an arrest warrant.

Under current law, once that arrest warrant is executed and a person is arrested, anyone can request a copy of the PCA from the clerk of the court. The clerk promptly notifies the defendant, the defendant's attorney if there is one, and the prosecutor of the request, and they each then have five days to ask the court to redact certain statutorily-defined information from the PCA, or to ask to have it sealed.

After those five days, the request is given to the judge, who then has five days to either release the PCA with appropriate redactions, if any, or to seal the PCA. In no event is this to take more than ten days from the date of the request.

The problem arises because of the short time frame for release of the PCA. In particular, when a judge signs an arrest warrant, they generally include a bond amount on the warrant. The warrant is executed and the person is arrested, they are taken to jail, then, if they make bond, they are released with instructions to appear in court on a future date. Depending on the jurisdiction and the availability of judges, that date may be more than ten days after the original arrest.

If a request for release of a PCA comes in upon arrest, the five days for the defendant to respond, and the ten days for the judge to release or seal the PCA, may occur before the defendant has even appeared in front of the court. They likely do not yet have an attorney, nor even know about their right to an attorney, yet the time is running on a request for release of sensitive information that may impact their right to a fair trial. This also creates a difficulty for the judge, because without knowing whether a defendant objects to the release of the PCA or not, or whether the defendant wishes to request redactions, the judge is put in the position of guessing what the defendant's wishes might be or what the defense trial strategy might later be.

The proposed amendment contained in HB 2320 addresses this timing issue by starting the clock at the time of the defendant's first appearance before a judge rather than upon execution of the arrest warrant. At the first appearance, the court informs the defendant of their right to an attorney, and if they cannot afford to hire one, the judge can appoint one, or the defendant can indicate their desire to represent themselves. Then, if a request for release of a PCA is made to the clerk, the defendant's right to counsel during the review process is protected and the judge can make his or her decisions about redactions or sealing the PCA with an opportunity to have heard from both sides.

Again, this amendment does not change the criteria for releasing or redacting the PCA, and the public will still have the same opportunity to obtain the information. It will simply extend the time for that release by a few days, in some cases, so that all defendant's rights can be protected, along with the state's interest in a fair trial for both sides.

Thank you again for your time and consideration. I will be happy to stand for questions.