



**OFFICE OF THE DISTRICT ATTORNEY
EIGHTEENTH JUDICIAL DISTRICT**

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**Testimony Regarding SB 138
Submitted by Aaron Breitenbach, Deputy District Attorney
On Behalf of Marc Bennett, District Attorney, Eighteenth Judicial District,
And the Kansas County and District Attorneys Association**

Honorable Chairman Warren and Members of the Senate Judiciary Committee:

Thank you for the opportunity to address you regarding Senate Bill 138. On behalf of Marc Bennett, District Attorney of the Eighteenth Judicial District, and the Kansas County and District Attorneys Association, I come to ask you to re-affirm how the power of a search warrant may be used in the State of Kansas.

As you know, the 4th Amendment to the U.S. Constitution and §15 of the Kansas Constitution enshrine the public's protection against unreasonable, warrantless searches. That protection is further codified in K.S.A. 22-2502, *et seq.*, which sets forth the procedural requirements and limitations for *someone* to obtain a search warrant. Historically, that "someone" has been a member of law enforcement.

However, in the past year, courts in at least two counties (Sedgwick and Leavenworth) have approved search warrants prepared by non-law enforcement. This is based on the current language of K.S.A. 22-2502 which states, "any person" may provide the sworn statement to support a judge's probable cause finding to approve a search warrant.

While in these instances this non-law enforcement affiant has been a criminal defense attorney, this application of the current statute could enable any person to swear facts before a judge that could lead to the issuance of a search warrant. Once approved by the Court, a search warrant compels "all law enforcement officers of the state" (or any specifically named) to execute the same within a proscribed period, using "all necessary and reasonable force." See K.S.A. 22-2505, 22-2506, and 22-2507.

The process for obtaining a warrant exists as a check on the government's power to enter, search, and seize our persons, property, and premises. It was never intended to be a mechanism to empower "any person" to use the government's power for their own intentions (be they good or ill). One could imagine how this power could be used by criminals, political opponents, or "any person" to harass, embarrass, or harm others, let alone the burden, danger, and liability placed on law enforcement who become compelled to execute a warrant their agency was not involved in procuring.

The minor revision captured in this bill seeks to ensure the use of a search warrant remains limited to those our founding fathers recognized as having a limited but legitimate need to use it: duly sworn members of law enforcement. While I recognize we have seen examples of errors made even by law enforcement in swearing to and obtaining search warrants, I hope we can agree that empowering “any person” to obtain a search warrant only adds to the risks our founding fathers sought to protect us from nearly 250 years ago.

Thank you for your time, attention and consideration in this matter.

Respectfully submitted,

Aaron Breitenbach
Deputy District Attorney