

## ELECTRONIC SURVEILLANCE

### ABA STANDARD

#### PART I. GENERAL PRINCIPLES

##### 1.1 OBJECTIVES; PROHIBITION; EXCEPTION.

###### (a) OBJECTIVES; PRIVACY; JUSTICE.

THE OBJECTIVES OF STANDARDS RELATING TO THE USE OF ELECTRONIC SURVEILLANCE TECHNIQUES SHOULD BE THE MAINTENANCE OF PRIVACY AND THE PROMOTION OF JUSTICE.

###### (b) PROHIBITION; PUBLIC; PRIVATE.

EXCEPT AS OTHERWISE EXPRESSLY PERMITTED, THE USE OF ELECTRONIC SURVEILLANCE TECHNIQUES FOR THE OVERHEARING OR RECORDING OF WIRE OR ORAL COMMUNICATIONS UTTERED IN PRIVATE WITHOUT THE CONSENT OF ONE OF THE PARTIES SHOULD BE EXPRESSLY PROHIBITED. SUBJECT TO LIMITATIONS OF CONSTITUTIONAL POWER AND CONSIDERATIONS OF FEDERAL-STATE COMITY, THE PROHIBITION SHOULD BE ENFORCED WITH APPROPRIATE CRIMINAL, CIVIL, AND EVIDENTIARY SANCTIONS.

###### (c) EXCEPTION; PUBLIC.

SUBJECT TO STRICT STATUTORY LIMITATIONS CONFORMING TO CONSTITUTIONAL REQUIREMENTS, THE ATTORNEY GENERAL OF THE UNITED STATES, OR THE PRINCIPAL PROSECUTING ATTORNEY OF A STATE OR LOCAL GOVERNMENT, OR LAW ENFORCEMENT ATTORNEYS OR OFFICERS ACTING UNDER HIS DIRECTION SHOULD BE PERMITTED TO USE ELECTRONIC SURVEILLANCE TECHNIQUES FOR THE OVERHEARING OR RECORDING OF WIRE OR ORAL COMMUNICATIONS UTTERED IN PRIVATE WITHOUT THE CONSENT OF A PARTY ONLY IN INVESTIGATIONS OF THE KINDS OF CRIMINAL ACTIVITY REFERRED TO IN SECTIONS 3.1 AND 5.5 OF THESE STANDARDS. THE LIMITATIONS SHOULD BE ENFORCED THROUGH APPROPRIATE ADMINISTRATIVE AND JUDICIAL PROCESSES.

### KANSAS CODE

This act shall be a part of and supplemental to the code of criminal procedure. As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein:

(1) "Wire communication" means any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of reception, furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of intrastate, interstate or foreign communications;

(2) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation;

(3) "Intercept" means the aural acquisition of the contents of any wire or oral communication through the use of any electronic, mechanical or other device;

(4) "Persons" means any individual, partnership, association, joint stock company, trust or corporation, including any official, employee or agent of the United States or any state or any political subdivision thereof;

(5) "Investigative or law enforcement officer" means any law enforcement officer who is empowered by the law of this state to conduct investigations of or to make arrests for offenses enumerated in this act, including any attorney authorized by law to prosecute or participate in the prosecution of such offenses;

(6) "Contents" when used with respect to any wire or oral communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport or meaning of such communication;

(7) "Aggrieved person" means a person who was a party to any intercepted wire or oral communication or a person against whom the interception was directed;

(8) "Judge of competent jurisdiction" means a justice of the supreme court or any district court judge. (K.S.A. 22-2514 (1974)).

(1) An ex parte order, authorizing the interception of a wire or oral communication may be issued by a judge of competent jurisdiction. The attorney general, district attorney or county attorney or, in the absence of the attorney general or a district attorney, an assistant attorney general or assistant district attorney who is specifically authorized in writing by the attorney general or district attorney, as the case may be, to make an application under this section for a specified period of time, not to exceed thirty (30) days, may make an application to any judge of competent jurisdiction for an order authorizing the interception of a wire or oral communication by an investigative or law enforcement officer or agency having responsibility for the investigation of the offense as to which the application is made, when the information to be obtained may provide evidence of the commission of any of the following offenses.

(a) Any crime directly and immediately affecting the safety of a human life or the national security;

- (b) Murder;
  - (c) Kidnapping;
  - (d) Treason;
  - (e) Sedition;
  - (f) Racketeering;
  - (g) Commercial bribery;
  - (h) Robbery;
  - (i) Theft, if the offense would constitute a felony;
  - (j) Bribery;
  - (k) Any violation of the uniform controlled substances act, if the offense would constitute a felony;
  - (l) Commercial gambling;
  - (m) Sports bribery;
  - (n) Tampering with a sports contest; or
  - (o) Any conspiracy to commit any of the foregoing offenses.
- (2) Any investigative or law enforcement officer who, by any means authorized by this act or by chapter 119 of title 18 of the United States code, has obtained knowledge of the contents of any wire or oral communication, or evidence derived therefrom, may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.
- (3) Any investigative or law enforcement officer who, by any means authorized by this act or by chapter 119 of title 18 of the United State code, has obtained knowledge of the contents of any wire or oral communication, or evidence derived therefrom, may use such contents to the extent such use is appropriate to the proper performance of his official duties.
- (4) Any person who has received, by any means authorized by this act or by chapter 119 of title 18 of the United States code or by a like statute of any other state, any information concerning a wire or oral communication, or evidence derived therefrom, intercepted in accordance with the provisions of this act, may disclose the contents of such communication or such derivative evidence while giving testimony under oath or affirmation in any proceeding in any court, or before any grand jury, of this state or of the United States or of any other state.
- (5) No otherwise privileged wire or oral communication intercepted in accordance with, or in violation of, the provisions of this act or of chapter 119 of title 18 of the United States code

shall lose its privileged character. No order issued under authority of this act shall authorize the interception of all wire or oral communications of an attorney, unless there is probable cause to believe that such attorney has committed or is involved in the commission of any crime for which an order authorizing the interception of wire or oral communications may be issued pursuant to section 2 of this act.

(6) When an investigative or law enforcement officer, while engaged in intercepting wire or oral communications in the manner authorized by this act, intercepts wire or oral communications relating to offenses other than those specified in the order authorizing the interception of the wire or oral communication, the contents thereof and evidence derived therefrom may be disclosed or used as provided in subsections (2) and (3) of this section. Such contents and evidence may be used under subsection (4) of this section when authorized or approved by a judge of competent jurisdiction, where such judge finds on subsequent application, made as soon as practicable, that the contents were otherwise intercepted in accordance with the provisions of this act, or with chapter 119 of title 18 of the United States code or a like statute. (K.S.A. 2515 (1974)).

(1) Each application for an order authorizing the interception of a wire or oral communication shall be made in writing, upon oath or affirmation, to a judge of competent jurisdiction, and shall state the applicant's authority to make such application. Each application shall include the following information:

(a) The identity of the prosecuting attorney making the application, and the identity of the investigative or law enforcement officer requesting such application to be made;

(b) A full and complete statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued, including (i) details as to the particular offense that has been, is being or is about to be committed, (ii) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, and (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;



(c) A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) A statement of the period of time for which the interception is required to be maintained and, if the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication first has been obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) A full and complete statement of the facts known to the applicant concerning all previous applications made to any judge for authorization to intercept wire or oral communications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each such application; and

(f) Where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(2) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application. Oral testimony shall be under oath or affirmation, and a record of such testimony shall be made by a certified shorthand reporter and reduced to writing.

(3) Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing the interception of wire or oral communications, if the judge determines on the basis of the facts submitted by the applicant that:

(a) There is probable cause for belief that a person is committing, has committed or is about to commit a particular offense enumerated in subsection (1) of section 2 of this act;

(b) There is probable cause for belief that particular communications concerning the offense will be obtained through such interception;

(c) Normal investigative procedures have been tried and have failed, or reasonably appear to be unlikely to succeed if tried, or to be too dangerous; and

(d) There is probable cause for belief that the facilities from which, or the place where, the wire or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of or commonly used by such person.

(4) Each order authorizing the interception of any wire or oral communication shall:

(a) Specify the identity of the person, if known, whose communications are to be intercepted;

(b) Specify the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(c) Specify with particularity a description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;

(d) Specify the identity of each investigative or law enforcement officer authorized to intercept the communications, and of the person making the application;

(e) Specify the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained; and

(f) Upon request of the applicant, direct that a communication common carrier or public utility, landlord, custodian or other person shall furnish the applicant forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier, utility, landlord, custodian or person is according the person whose communications are to be intercepted. Any communication common carrier or public utility, landlord, custodian or other person furnishing such facilities or technical assistance shall be compensated therefor by the applicant at the prevailing rates.

(5) No order entered under this section may authorize the interception of any wire or oral communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than thirty (30) days. Extensions of an order may be granted, but only upon application for an extension made in accordance with subsection (1) of this section and the court making the findings required by subsection (3) of this section. The period of any such

extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty (30) days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this act, and must terminate upon attainment of the authorized objective, or in any event at the end of thirty (30) days after the date of the order or extension thereof.

(6) Whenever an order authorizing the interception of wire or oral communications is entered pursuant to this act, the order may require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge may require.

(7) (a) The contents of any wire or oral communication intercepted by any means authorized by this act shall be recorded, if possible, on tape or wire or other comparable device. The recording of the contents of any wire or oral communication under this subsection shall be done in a manner which will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under his directions. Custody of the recordings shall be wherever the judge orders, and the recordings shall not be destroyed except upon order of the issuing or denying judge and, in any event, shall be kept for not less than ten (10) years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsections (2) and (3) of section 2 of this act for investigations. The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire or oral communication or evidence derived therefrom under subsection (4) of section 2.

(b) Applications made and orders granted under this act shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Such applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing

or denying judge, and in any event shall be kept for not less than ten (10) years.

(c) Any violation of the provisions of paragraph (a) or (b) of this subsection may be punished as contempt of the issuing or denying judge.

(8) The contents of an intercepted wire or oral communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court of this state, unless each party, not less than ten (10) days before the trial, hearing or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized. Said ten-day period may be waived by the judge, if he finds that it was not possible to furnish the party with the above information ten (10) days before the trial, hearing or proceeding, and that the party will not be prejudiced by the delay in receiving such information.

(9) (a) Any aggrieved person in any trial, hearing or proceeding in or before any court, department, officer, agency, regulatory body or other authority of this state, or a political subdivision thereof, may move to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom, on the grounds that:

- (i) The communication was unlawfully intercepted;
- (ii) The order of authorization under which it was intercepted is insufficient on its face; or
- (iii) The interception was not made in conformity with the order of authorization.

Such motion shall be made before the trial, hearing or proceeding, unless there was not opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this act. Upon the filing of such motion by the aggrieved person, the judge in his discretion may make available to the aggrieved person or his counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interest of justice.

(b) In addition to any other right to appeal, the state shall have the right to appeal:

- (i) From an order granting a motion to suppress made under paragraph (a) of this subsection. Such appeal shall be taken within ten (10) days after the order of suppression was entered and shall be diligently prosecuted as in the case of other interlocutory appeals or under such rules as the supreme

court may adopt;

(ii) From an order denying an application for an order authorizing the interception of wire or oral communications, and any such appeal shall be ex parte and shall be in camera in preference to all other pending appeals in accordance with rules promulgated by the supreme court. (K.S.A. 22-2516 (1974)).

Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee or other authority of this state, or a political subdivision thereof, if the interception of such wire or oral communication was not obtained in compliance with the provisions of this act. (K.S.A. 22-2517 (1974)).

(1) Any person whose wire or oral communication is intercepted, disclosed or used in violation of this act shall have a civil cause of action against any person who intercepts, discloses or uses, or procures any other person to intercept, disclose or use, such communications, and shall be entitled to recover from any such person:

(a) Actual damages, but not less than liquidated damages computed at the rate of one hundred dollars (\$100) a day for each day of violation or one thousand dollars (\$1,000), whichever is greater;

(b) punitive damages; and

(c) reasonable attorney's fees and other litigation costs reasonably incurred.

(2) A good faith reliance by any person on a court order authorizing the interception of any wire or oral communication shall constitute a complete defense in any civil or criminal action brought against such person based upon such interception. (K.S.A. 22-2518 (1974)).

(1) Within thirty (30) days after the expiration of an order entered under section 3, or any extension thereof, the judge issuing such order shall report to the administrative office of the U.S. courts such information as is required to be filed by section 2519 of title 18 of the United States code. A duplicate copy of such report shall be filed, at the same time, with the judicial administrator of the courts of this state.



(2) In January of each year, the attorney general and each district attorney and county attorney shall report to the administrative office of the United States courts such information as is required to be filed by section 2519 of title 18 of the United States code. A duplicate copy of such report shall be filed, at the same time, with the judicial administrator of the courts of this state. (K.S.A. 22-2519 (1974)).

(1) Eavesdropping is knowingly and without lawful authority:

(a) Entering into a private place with intent to listen surreptitiously to private conversations or to observe the personal conduct of any other person or persons therein; or

(b) Installing or using outside a private place any device for hearing, recording, amplifying, or broadcasting sounds originating in such place, which sounds would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy therein; or

(c) Installing or using any device or equipment for the interception of any telephone, telegraph or other wire communication without the consent of the person in possession or control of the facilities for such wire communication.

(2) A "private place" within the meaning of this section is a place where one may reasonably expect to be safe from uninvited intrusion or surveillance, but does not include a place to which the public has lawful access.

(3) It shall not be unlawful for an operator of a switchboard, or any officer, employee or agent of any public utility providing telephone communications service whose facilities are used in the transmission of a communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is incident to the rendition of public utility service or to the protection of the rights of property of such utility.

(4) Eavesdropping is a class A misdemeanor. (K.S.A. 21-4001 (1974)).

#### COMMENT

Kansas is in substantial compliance with the objectives of the Standard. In Re Olander, 213 Kan. 282, 515 P.2d 1211 (1973) Electronic surveillance is a sensitive area of the law; legislative bodies have strictly limited the right to apply for eavesdropping orders to small select groups of public officials. The attorney general, an assistant attorney general, or a county attorney may apply for such an order, but

an assistant county attorney may not. This case was decided under the previous law but it appears the results would be the same under the new law. State v. Wigley, 210 Kan. 472, 502 P.2d 819 (1972), the general impact of K.S.A. 1971 Supp. 21-4001 - 4002 is to protect the privacy of communication between individuals against surreptitious invasion. The installation or use of an electronic device to record communications transmitted by telephone, or the recording of a message so transmitted, with the consent of the person in possession or control of the facilities for such transmission, does not violate K.S.A. 21-4001 (1974).

#### ABA STANDARD

##### 2.1 CRIMINAL SANCTIONS.

###### (a) PENALTY.

EXCEPT AS OTHERWISE PERMITTED UNDER THESE STANDARDS, CONDUCT AS SPECIFIED IN THIS SECTION RELATING TO THE USE OF A MECHANICAL, ELECTRONIC OR ANY OTHER DEVICE FOR OVERHEARING OR RECORDING OF WIRE OR ORAL COMMUNICATIONS UTTERED IN PRIVATE WITHOUT THE CONSENT OF A PARTY SHOULD BE MADE CRIMINAL AND REGULATED.

#### KANSAS CODE

See K.S.A. 22-2514 (1974) to K.S.A. 22-2519 (1974)  
and K.S.A. 21-4001 (1974).

#### COMMENT

The Kansas code is in full compliance with the Standard.

#### ABA STANDARD

###### (b) SCOPE; OVERHEARING; RECORDING; USE; DISCLOSURE; DEVICES.

THE LEGISLATION SHOULD INCLUDE:

(i) PROHIBITION OF THE INTENTIONAL OVERHEARING OR RECORDING OF SUCH COMMUNICATIONS BY MEANS OF SUCH A DEVICE;

(ii) PROHIBITION OF THE INTENTIONAL USE OR DISCLOSURE OF SUCH COMMUNICATIONS SO OVERHEARD OR RECORDED OR EVIDENCE DERIVED THEREFROM;



(iii) PROHIBITION OF THE INTENTIONAL UNAUTHORIZED USE OR DISCLOSURE OF SUCH COMMUNICATIONS OTHERWISE LAWFULLY SO OVERHEARD OR RECORDED OR EVIDENCE DERIVED THEREFROM;

(iv) REGULATION, BACKED BY CRIMINAL SANCTIONS, OF THE POSSESSION, SALE, DISTRIBUTION, ADVERTISEMENT OR MANUFACTURE OF A DEVICE THE DESIGN OR DISGUISE OF WHICH MAKES IT PRIMARILY USEFUL FOR THE SURREPTITIOUS OVERHEARING OR RECORDING OF SUCH COMMUNICATIONS;

(v) PROHIBITION OF THE INTENTIONAL PROMOTION, WHETHER BY ADVERTISING OR OTHERWISE, OF ANY DEVICE FOR UNLAWFUL USE IN OVERHEARING OR RECORDING SUCH COMMUNICATIONS; AND

(vi) A PROVISION FOR THE CONFISCATION OF ANY OVERHEARING OR RECORDING DEVICE POSSESSED, USED, SOLD, DISTRIBUTED OR MANUFACTURED IN VIOLATION OF THE PROHIBITION OR REGULATION.

#### KANSAS CODE

See. K.S.A. 1971 Supp. 21-4001 cited under 1.1 supra.

#### COMMENT

The Kansas code is in compliance only as to subsections (i) and (ii). However, the rules of evidence applicable to both civil and criminal cases would preclude the use of unlawfully seized evidence.

#### ABA STANDARD

(c) ENFORCEMENT; IMMUNITY.

THE PROHIBITION, WHERE NECESSARY, SHOULD CARRY WITH IT PROVISION FOR THE GRANTING OF IMMUNITY FROM PROSECUTION IN THE INVESTIGATION OF VIOLATIONS OF IT.

#### KANSAS CODE

...The county or district attorney or the attorney general may at any time, on behalf of the state, grant in writing to any person immunity from prosecution or punishment on account of any transaction or matter contained in any statement or about which such person shall be compelled to testify... (Laws of 1972, Ch. 122).

COMMENT

The Kansas code is in compliance with the Standard.

ABA STANDARD

2.2 CIVIL SANCTIONS.

(a) CAUSE OF ACTION.

EXCEPT AS OTHERWISE EXPRESSLY PERMITTED, THE USE OF ELECTRONIC SURVEILLANCE TECHNIQUES FOR THE OVERHEARING OR RECORDING OF WIRE OR ORAL COMMUNICATIONS UTTERED IN PRIVATE WITHOUT THE CONSENT OF A PARTY OR THE USE OR DISCLOSURE OF SUCH COMMUNICATIONS OR EVIDENCE DERIVED THEREFROM, KNOWING OR HAVING REASON TO KNOW THAT SUCH COMMUNICATION OR EVIDENCE WAS SO OBTAINED, SHOULD GIVE RISE TO A CIVIL CAUSE OF ACTION AGAINST ANY PERSON OR GOVERNMENTAL AGENCY WHO SO OVERHEARS, RECORDS, OR DISCLOSES OR USES SUCH COMMUNICATIONS OR EVIDENCE DERIVED THEREFROM, OR PROCURES OR AUTHORIZES ANOTHER TO DO SO.

(b) DEFENSE; COURT ORDER.

GOOD FAITH RELIANCE ON A COURT ORDER OR OTHER LEGISLATIVE AUTHORIZATION SHOULD CONSTITUTE A COMPLETE DEFENSE TO CIVIL RECOVERY.

KANSAS CODE

No comparable code provision.

COMMENT

Kansas is in compliance with the Standard. A civil action could be maintained for damages for invasion of privacy.

ABA STANDARD

2.3 EVIDENTIARY SANCTIONS.

(a) SUPPRESSION.

EXCEPT AS OTHERWISE EXPRESSLY PERMITTED UNDER THESE STANDARDS, NO WIRE OR ORAL COMMUNICATION UTTERED IN PRIVATE AND OVERHEARD OR RECORDED WITHOUT THE CONSENT OF A PARTY OR EVIDENCE DERIVED THEREFROM, SHOULD BE RECEIVED IN EVIDENCE IN ANY TRIAL, HEARING OR PROCEEDING IN OR BEFORE ANY COURT, GRAND JURY, DEPARTMENT, OFFICER, AGENCY, REGULATORY BODY OR OTHER AUTHORITY;

KANSAS CODE

No comparable code provision.

#### COMMENT

Kansas is in compliance with the code. Following the lead of Katz v. United States, 389 U.S. 347 (1967), Kansas has not allowed evidence obtained by an illegal "search".

#### ABA STANDARD

##### (b) PRE-USE NOTICE IN CRIMINAL CASES.

THE STANDARDS SET FORTH IN ABA STANDARDS RELATING TO DISCOVERY AND PROCEDURE BEFORE TRIAL SHOULD APPLY TO DISCLOSURE BY THE PROSECUTION IN A CRIMINAL CASE OF INFORMATION RELATING TO THE USE OF ELECTRONIC SURVEILLANCE TECHNIQUES AND TO EVIDENCE DERIVED THEREFROM.

#### KANSAS CODE

See K.S.A. 22-2514 (1974) to K.S.A. 22-2519 (1974) cited supra at 1.1.

#### COMMENT

The Kansas code is in compliance. See Discovery and Procedure Before Trial. Note that in Kansas, a request must be made by defendant.

#### ABA STANDARD

##### (c) MOTION TO SUPPRESS; TIME; APPEALABILITY.

ANY PARTY AGGRIEVED BY THE OVERHEARING, RECORDING, USE OR DISCLOSURE OF SUCH COMMUNICATIONS OR EVIDENCE DERIVED THEREFROM SO OVERHEARD, RECORDED, USED OR DISCLOSED OTHERWISE THAN AS EXPRESSLY PERMITTED SHOULD BE PERMITTED TO MOVE TO SUPPRESS SUCH COMMUNICATIONS OR EVIDENCE DERIVED THEREFROM. THE MOTION SHOULD BE MADE PRIOR TO THE TRIAL, HEARING OR OTHER PROCEEDING UNLESS THERE WAS NO OPPORTUNITY TO MAKE THE MOTION OR THE PARTY WAS UNAWARE OF THE GROUNDS ON WHICH THE MOTION COULD BE MADE. WHERE SUCH A MOTION IS MADE AND GRANTED, PRIOR TO THE ATTACHING OF JEOPARDY, DURING THE COURSE OF A CRIMINAL PROSECUTION, THE PROSECUTOR, WHERE NECESSARY, SHOULD BE AFFORDED A RIGHT OF APPEAL PROVIDED THAT THE APPEAL IS NOT TAKEN FOR THE PURPOSE OF DELAY AND IS DILIGENTLY PROSECUTED.

## KANSAS CODE

When a judge prior to the commencement of trial of a criminal action makes an order quashing a warrant or a search warrant, suppressing evidence or suppressing a confession or admission an appeal may be taken by the prosecution from such order if application is made to the court having jurisdiction of appeals within ten (10) days after entry of the order under such terms and conditions as the court may direct... (K.S.A. 1971 Supp. 22-3603).

Prior to the trial a defendant aggrieved by an unlawful search and seizure may move for the return of property and to suppress as evidence anything so obtained. (K.S.A. 1971 Supp. 22-3216(1)).

## COMMENT

The Kansas code is in compliance with the Standard.

## ABA STANDARD

### PART III. NATIONAL SECURITY

#### 3.1 COUNTER INTELLIGENCE; SUPERVISION.

THE USE OF ELECTRONIC SURVEILLANCE TECHNIQUES BY APPROPRIATE FEDERAL OFFICERS FOR THE OVERHEARING OR RECORDING OF WIRE OR ORAL COMMUNICATIONS TO PROTECT THE NATION FROM ATTACK BY OR OTHER HOSTILE ACTS OF A FOREIGN POWER OR TO PROTECT MILITARY OR OTHER NATIONAL SECURITY INFORMATION AGAINST FOREIGN INTELLIGENCE ACTIVITIES SHOULD BE PERMITTED SUBJECT TO APPROPRIATE PRESIDENTIAL AND CONGRESSIONAL STANDARDS AND SUPERVISION.

#### 3.2 USE; DISCLOSURE.

SUCH COMMUNICATIONS SO OVERHEARD OR RECORDED, OR EVIDENCE DERIVED THEREFROM, SHOULD BE RECEIVED IN EVIDENCE IN ANY FEDERAL OR STATE TRIAL, HEARING OR PROCEEDING IN OR BEFORE ANY FEDERAL OR STATE COURT, GRAND JURY, DEPARTMENT, OFFICER, AGENCY, REGULATORY BODY OR OTHER AUTHORITY WHERE THE OVERHEARING OR RECORDING WAS REASONABLE. OTHER USE OR DISCLOSURE OF SUCH COMMUNICATIONS OR EVIDENCE DERIVED THEREFROM SHOULD BE LIMITED TO THE USE OR DISCLOSURE NECESSARY TO ACHIEVE THE PURPOSE OF THE OVERHEARING OR RECORDING OR ON A SHOWING OF GOOD CAUSE BEFORE A JUDICIAL OFFICER.

KANSAS CODE

No comparable code provision.

COMMENT

These Standards have no application to our Kansas code.

ABA STANDARD

PART IV. OVERHEARING OR RECORDING WITH CONSENT.

4.1 OVERHEARING OR RECORDING.

THE SURREPTITIOUS OVERHEARING OR RECORDING OF A WIRE OR ORAL COMMUNICATION WITH THE CONSENT OF, OR BY, ONE OF THE PARTIES TO THE COMMUNICATION SHOULD BE PERMITTED, UNLESS SUCH COMMUNICATION IS OVERHEARD OR RECORDED FOR THE PURPOSE OF COMMITTING A CRIME OR OTHER UNLAWFUL HARM.

KANSAS CODE

(1) Breach of privacy is knowingly and without lawful authority:

(a) Intercepting, without the consent of the sender or receiver, a message by telephone, telegraph, letter or other means of private communication; or

(b) Divulging, without the consent of the sender or receiver, the existence or contents of such message if such person knows that the message was illegally intercepted, or if he illegally learned of the message in the course of employment with an agency in transmitting it.

(2) Subsection (1)(a) of this section shall not apply to messages overheard through a regularly installed instrument on a telephone party line or on an extension.

(3) Breach of privacy is a class A misdemeanor. (K.S.A. 1971 Supp. 21-4002). See also K.S.A. 1971 Supp. 21-4001 cited at 1.1 supra.

COMMENT

The Kansas code is in substantial conformity with the Standard.

ABA STANDARD

4.2 AUTHENTICITY.

WHEN LAW ENFORCEMENT OFFICERS ENGAGE IN RECORDING PRACTICE PERMITTED UNDER SECTION 4.1, THEY SHOULD EMPLOY DEVICES AND TECHNIQUES WHICH WILL INSURE THAT THE RECORDING WILL BE INsofar AS PRACTICABLE COMPLETE, ACCURATE AND INTELLIGIBLE. ADMINISTRATIVE PROCEDURES SHOULD BE FOLLOWED UNDER THE SUPERVISION OF THE PRINCIPAL PROSECUTING ATTORNEY SIMILAR TO THOSE SET FORTH IN SECTIONS 5.13, 5.14, AND 5.18.

KANSAS CODE

No comparable code provision.

COMMENT

Kansas practice is in substantial compliance with the Standard.

ABA STANDARD

PART V. OVERHEARING OR RECORDING WITHOUT CONSENT

5.1 OVERHEARING OR RECORDING; JUDICIAL ORDER; AUTHORIZED APPLICATION.

THE USE OF ELECTRONIC SURVEILLANCE TECHNIQUES BY LAW ENFORCEMENT OFFICERS FOR THE OVERHEARING OR RECORDING OF WIRE OR ORAL COMMUNICATIONS UTTERED IN PRIVATE WITHOUT THE CONSENT OF A PARTY SHOULD BE PERMITTED UPON A JUDICIAL ORDER OF THE HIGHEST COURT OF GENERAL TRIAL JURISDICTION BASED ON AN APPLICATION IN COMPLIANCE WITH SECTION 5.3 AND AUTHORIZED BY THE APPROPRIATE PROSECUTING OFFICER, AS DESCRIBED IN SECTION 1.1 (c).

KANSAS CODE

See K.S.A. 22-2514 (1974) to K.S.A. 22-2519 (1974) cited at 1.1 supra.

COMMENT

The Kansas code is in substantial compliance with the Standard.

ABA STANDARD

5.2 EMERGENCY SITUATION.

THE USE OF SUCH TECHNIQUES TO SO OVERHEAR OR RECORD SUCH COMMUNI-

CATIONS WITHOUT A JUDICIAL ORDER SHOULD BE PERMITTED WHERE THE LAW ENFORCEMENT OFFICER, SPECIALLY DESIGNATED BY THE APPROPRIATE PROSECUTING OFFICER, AS DESCRIBED IN SECTION 1.1(c)

(i) IS CONFRONTED WITH AN EMERGENCY SITUATION WHICH REQUIRES SUCH AN OVERHEARING OR RECORDING TO BE MADE WITHIN SUCH TIME THAT IT IS NOT PRACTICABLE TO MAKE AN APPLICATION AND THE EMERGENCY SITUATION EXISTS WITH RESPECT TO CONSPIRATORIAL ACTIVITIES THREATENING THE NATIONAL SECURITY INTEREST OR TO CONSPIRATORIAL ACTIVITIES CHARACTERISTIC OF ORGANIZED CRIME;

(ii) DETERMINES THAT THERE ARE GROUNDS CONSISTENT WITH THESE STANDARDS UPON WHICH AN ORDER COULD BE OBTAINED AUTHORIZING SUCH AN OVERHEARING; AND

(iii) MAKES AN APPLICATION SETTING OUT THE FACTS CONSTITUTING THE EMERGENCY FOR AN ORDER OF APPROVAL OF THE OVERHEARING TO A JUDICIAL OFFICER WITHIN A REASONABLE PERIOD OF TIME BUT NOT MORE THAN FORTY-EIGHT HOURS AFTER THE OVERHEARING HAS OCCURRED OR HAS BEGUN TO OCCUR.

WHERE AN APPLICATION FOR APPROVAL IS DENIED, ALL OVERHEARD OR RECORDED COMMUNICATIONS SHOULD BE TREATED AS PROVIDED IN 2.3(a) AND AN INVENTORY FILED AS PROVIDED IN 5.15. THE DENIAL OF AN ORDER OF APPROVAL SHOULD BE MADE APPEALABLE.

#### KANSAS CODE

No comparable code provision.

#### COMMENT

The Kansas code is not in conformity with this Standard.

#### ABA STANDARD

##### 5.3 APPLICATION; FORM; CONTENTS; ADDITIONAL FACTS.

AN APPLICATION FOR AN ORDER AUTHORIZING OR APPROVING THE USE OF SUCH TECHNIQUES FOR THE OVERHEARING OR RECORDING OF SUCH COMMUNICATIONS SHOULD BE MADE IN WRITING UPON AN OATH OR AFFIRMATION AND CONTAIN THE FOLLOWING INFORMATION -

(i) THE IDENTITY OF THE PROSECUTING OFFICER AUTHORIZING THE APPLICATION;

(ii) THE IDENTITY OF THE LAW ENFORCEMENT OFFICER MAKING THE APPLICATION;

(iii) THE IDENTITY OF THE PERSON, IF KNOWN, WHOSE COMMUNICATIONS ARE TO BE OR WERE OVERHEARD OR RECORDED;

(iv) A SPECIFICATION OF THE PARTICULAR OFFENSE WHICH IS OR WAS UNDER INVESTIGATION;

(v) A PARTICULAR DESCRIPTION OF THE TYPE OF COMMUNICATIONS SOUGHT TO BE OR WHICH WERE OVERHEARD OR RECORDED;

(vi) A PARTICULAR DESCRIPTION AND THE LOCATION OF THE FACILITIES, IF ANY, OVER WHICH OR THE PLACE WHERE THE COMMUNICATIONS ARE TO BE OR WERE OVERHEARD OR RECORDED;

(vii) THE EXPECTED OR ACTUAL PERIOD OF TIME OF THE OVERHEARING OR RECORDING, AND IF THE NATURE OF THE INVESTIGATION IS SUCH THAT THE AUTHORIZATION SHOULD NOT AUTOMATICALLY TERMINATE WHEN THE DESCRIBED TYPE OF COMMUNICATION HAS BEEN FIRST OBTAINED, A PARTICULAR DESCRIPTION OF FACTS ESTABLISHING PROBABLE CAUSE TO BELIEVE THAT ADDITIONAL COMMUNICATIONS OF THE SAME TYPE WILL OCCUR THEREAFTER;

(viii) A COMPLETE STATEMENT OF THE FACTS RELIED UPON BY THE APPLICANT WARRANTING THE ISSUANCE OF AN ORDER OF AUTHORIZATION OR APPROVAL; AND

(ix) A RECITATION OF ALL FACTS CONCERNING PREVIOUS APPLICATIONS OR OVERHEARING OR RECORDING, KNOWN TO THE INDIVIDUALS AUTHORIZING AND MAKING THE APPLICATION, MADE IN REFERENCE TO THE PERSON WHOSE COMMUNICATIONS ARE TO BE OR WERE OVERHEARD OR RECORDED, INCLUDING, WHERE THE APPLICATION IS FOR THE EXTENSION OF AN ORDER, A STATEMENT SETTING FORTH THE RESULTS THUS FAR OBTAINED FROM THE OVERHEARING OR RECORDING OR A REASONABLE EXPLANATION OF THE FAILURE TO OBTAIN SUCH RESULTS.

THE JUDICIAL OFFICER TO WHOM THE APPLICATION IS SUBMITTED SHOULD BE PERMITTED TO REQUIRE THE APPLICANT TO FURNISH ADDITIONAL FACTS UNDER OATH OR AFFIRMATION, WHICH SHOULD BE DULY RECORDED.

#### KANSAS CODE

See K.S.A. 22-2514 (1974) to K.S.A. 22-2519 (1974) cited supra at 1.1.

#### COMMENT

The Kansas code is in compliance with subsections (i) through (vi) inclusive and with the last paragraph.

#### ABA STANDARD

##### 5.4 PROBABLE CAUSE: KINDS OF SHOWINGS.

THE STATEMENTS OF FACTS RELIED UPON AND SUBMITTED BY THE APPLICANT SHOULD ESTABLISH PROBABLE CAUSE FOR BELIEF THAT -

(i) (A) WHERE THE APPLICANT EXPECTS OR EXPECTED AN EXTENDED PERIOD OF OVERHEARING OR RECORDING, THE PERSON IS PRESENTLY OR WAS THEN ENGAGED OVER A PERIOD OF TIME IN THE COMMISSION OF A



PARTICULAR OFFENSE WITH TWO OR MORE CLOSE ASSOCIATES AS PART OF A CONTINUING CRIMINAL ACTIVITY; OR

(B) WHERE THE APPLICANT EXPECTS OR EXPECTED A BRIEF PERIOD OF OVERHEARING OR RECORDING, THE PERSON IS OR WAS COMMITTING, HAS OR HAD COMMITTED, OR IS OR WAS ABOUT TO COMMIT A PARTICULAR OFFENSE AT A SPECIFIC TIME;

(ii) FACTS CONCERNING THAT PARTICULAR OFFENSE COULD HAVE BEEN OR MAY BE OBTAINED THROUGH AN OVERHEARING OR RECORDING FROM THE FACILITIES OVER WHICH OR AT THE PLACE WHERE SUCH COMMUNICATIONS ARE TO BE OR WERE OVERHEARD OR RECORDED;

(iii) OTHER INVESTIGATIVE PROCEDURES HAVE OR HAD BEEN TRIED AND HAVE OR HAD FAILED OR REASONABLY APPEAR OR APPEARED TO BE UNLIKELY TO SUCCEED IF TRIED OR TO HAVE BEEN OR TO BE TOO DANGEROUS.

#### KANSAS CODE

See K.S.A. 22-2515 (1974) cited 1.1  
supra.

#### COMMENT

Kansas is in substantial conformity with the Standard.

#### ABA STANDARD

##### 5.5 DESIGNATED OFFENSES; CRITERIA.

AN APPLICATION FOR AUTHORIZATION OR APPROVAL SHOULD BE PERMITTED ONLY IN THE INVESTIGATION OF DESIGNATED OFFENSES. THE OFFENSES SHOULD BE SERIOUS IN THEMSELVES OR CHARACTERISTIC OF GROUP CRIMINAL ACTIVITY.

#### KANSAS CODE

See K.S.A. 22-2515 (1974) cited supra  
at 1.1.

Kansas fully conforms with the Standard.

#### ABA STANDARD

##### 5.6 OTHER OFFENSES; USE OR DISCLOSURE; TIME.

THE USE OR DISCLOSURE OF FACTS CONTAINED IN AN OVERHEARD OR RECORDED COMMUNICATION RELATING TO AN OFFENSE OTHER THAN THE OFFENSE UNDER INVESTIGATION SHOULD BE PERMITTED WHERE AN APPLICATION FOR AN ORDER OF APPROVAL IS DULY MADE AS PROVIDED IN 5.3 WHICH INCLUDES AN ADDITIONAL SHOWING THAT THE OVERHEARING OR RECORDING WAS OR COULD HAVE BEEN OTHERWISE AUTHORIZED. AN APPLICATION FOR APPROVAL SHOULD, HOWEVER, BE PERMITTED FOR THE USE OR DISCLOSURE OF FACTS RELATING TO OTHER THAN DESIGNATED OFFENSES. WHERE THE APPLICATION CONCERNS AN OVERHEARING OR RECORDING MADE DURING A PERIOD OF AUTHORIZED OVERHEARING OR RECORDING, THE APPLICATION SHOULD BE MADE AS SOON AS PRACTICABLE. WHERE THE APPLICATION CONCERNS AN OVERHEARING OR RECORDING MADE IN AN EMERGENCY SITUATION, THE APPLICATION SHOULD BE MADE WITHIN THE PERIOD OF TIME OTHERWISE REQUIRED BY 5.2. THE DENIAL OF AN APPLICATION FOR AN ORDER OF APPROVAL SHOULD BE MADE APPEALABLE.

#### KANSAS CODE

No comparable code provision.

#### COMMENT

Kansas appears to be in conformity by its case law relating to search and seizure. In United States v. Cox, 449 F.2d 679 (10th Cir. 1971) rehearing denied, the court upheld the use of a wiretap which was authorized for an offense relating to narcotics, but which produced information relative to a bank robbery. The court held that it would be unreasonable to require officers under the factual situation to sit idly by and let a bank robbery occur simply because they learned of it as a result of an authorized intercept relating to other offenses.

#### ABA STANDARD

##### 5.7 JUDICIAL DISCRETION AND DETERMINATION.

THE JUDICIAL OFFICER TO WHOM AN APPLICATION FOR AUTHORIZATION OR APPROVAL IS SUBMITTED SHOULD BE PERMITTED IN THE EXERCISE OF SOUND DISCRETION TO DENY THE APPLICATION, AND SHOULD BE AUTHORIZED TO GRANT THE ORDER AS REQUESTED OR WITH APPROPRIATE MODIFICATIONS ONLY IF HE DETERMINES THAT THERE IS PROBABLE CAUSE AS PROVIDED IN SECTION 5.4.

#### KANSAS LAW

See K.S.A. 22-2515 (1974) cited in  
1.1 supra.

COMMENT

Kansas is in compliance with the Standard.

ABA STANDARD

5.8 ORDER; FORM; CONTENTS.

THE ORDER SHOULD BE ISSUED IN WRITING SIGNED BY THE JUDICIAL OFFICER AND CONTAIN THE FOLLOWING INFORMATION:

(i) THE IDENTITY OF THE PROSECUTING OFFICER AUTHORIZING THE APPLICATION;

(ii) THE IDENTITY OF THE AGENCY TO WHICH AUTHORITY TO OVERHEAR OR RECORD OR TO WHICH APPROVAL OF OVERHEARING OR RECORDING IS GRANTED;

(iii) THE IDENTITY OF THE PERSON, IF KNOWN, WHOSE COMMUNICATIONS ARE TO BE OR WERE OVERHEARD OR RECORDED;

(iv) A SPECIFICATION OF THE PARTICULAR OFFENSE AS TO WHICH OVERHEARING OR RECORDING IS AUTHORIZED OR WAS APPROVED;

(v) A PARTICULAR DESCRIPTION OF AND THE LOCATION OF THE FACILITIES FROM WHICH OR THE PLACE WHERE THE COMMUNICATIONS ARE TO BE OR WERE OVERHEARD OR RECORDED;

(vi) A PARTICULAR DESCRIPTION OF AND THE LOCATION OF THE FACILITIES FROM WHICH OR THE PLACE WHERE THE COMMUNICATIONS ARE TO BE OR WERE OVERHEARD OR RECORDED;

(vii) THE PERIOD OF TIME OF AUTHORIZED OR APPROVED OVERHEARING AS PROVIDED IN SECTION 5.9.

(viii) A REQUIREMENT, WHERE APPROPRIATE, FOR PROGRESS AND NEED REPORT AS PROVIDED IN SECTION 5.9.

KANSAS CODE

K.S.A. 22-2515 (1974) cited under 1.1  
supra.

COMMENT

The Kansas code is in substantial conformity except as to subsections (i) and (viii). The time limitation under the Kansas provision makes it unclear whether the ten day limit refers to the initial issuance only or to extensions and renewals.

ABA STANDARD

5.9 TIME; TERMINATION; EXTENSIONS.

NO ORDER SHOULD AUTHORIZE OR APPROVE THE OVERHEARING OR RECORDING

OF COMMUNICATIONS FOR A PERIOD OF TIME BEYOND THAT NECESSARY TO ACHIEVE THE OBJECTIVE OF THE OVERHEARING OR RECORDING WARRANTED BY THE SHOWING OF PROBABLE CAUSE AS PROVIDED IN 5.4 (i) (A) AND (B). AN ORDER OF AUTHORIZATION SHOULD REQUIRE THAT OVERHEARING OR RECORDING BEGIN AS SOON AS PRACTICABLE AND TERMINATE WHEN THE OBJECTIVE IS ACHIEVED, OR, IN ANY EVENT, AFTER FIFTEEN DAYS FROM THE DATE SPECIFIED IN THE ORDER. EXTENSIONS OF THE ORDER SHOULD BE GRANTED FOR PERIODS OF NOT LONGER THAN THIRTY DAYS ONLY UPON PROPER SHOWINGS OF PROBABLE CAUSE AS PROVIDED IN 5.4. NO LIMIT SHOULD BE PLACED ON THE NUMBER OF EXTENSIONS WHICH CAN BE GRANTED; BUT THE COURT SHOULD BE AUTHORIZED TO REQUIRE PROGRESS REPORTS SHOWING NEED FOR EXTENDED OVERHEARING OR RECORDING AT SUCH INTERVALS AS IT DEEMS APPROPRIATE AND, WHERE APPROPRIATE, TO TERMINATE THE ORDER IN THE EXERCISE OF SOUND DISCRETION.

#### KANSAS CODE

K.S.A. 22-2515 (1974) cited at 1.1  
supra.

#### COMMENT

Kansas is in compliance with the Standard even though the ten day limitation is more restrictive than the Standard's fifteen day limit. There is not express limitation on the time for extensions or renewals of the order.

#### ABA STANDARD

##### 5.10 PUBLIC FACILITIES.

NO ORDER SHOULD BE PERMITTED AUTHORIZING OR APPROVING THE OVERHEARING OR RECORDING OF COMMUNICATIONS OVER PUBLIC FACILITIES UNLESS A SHOWING IN ADDITION TO THAT REQUIRED UNDER SECTIONS 5.3 AND 5.4 IS MADE ESTABLISHING PROBABLE CAUSE FOR BELIEF THAT -

(i) THE OVERHEARING OR RECORDING WILL BE OR WAS MADE IN SUCH A MANNER AS TO ELIMINATE OR MINIMIZE INsofar AS PRACTICABLE THE OVERHEARING OR RECORDING OF OTHER COMMUNICATIONS WHOSE OVERHEARING OR RECORDING ARE NOT OR WOULD NOT BE AUTHORIZED, AND

(ii) THERE IS OR WAS A SPECIAL NEED FOR THE OVERHEARING OR RECORDING OF COMMUNICATIONS OVER THE FACILITIES.

#### KANSAS CODE

No comparable code provision.

1974 Supplement

COMMENT

The Kansas code is not in conformity with the Standard.

ABA STANDARD

5.11 PRIVILEGED COMMUNICATIONS.

(a) FACILITIES AND PLACES.

NO ORDER SHOULD BE PERMITTED AUTHORIZING OR APPROVING THE OVER-HEARING OR RECORDING OF COMMUNICATIONS OVER A FACILITY OR IN A PLACE PRIMARILY USED BY LICENSED PHYSICIANS, LICENSED LAWYERS, OR PRACTICING CLERGYMEN OR IN A PLACE USED PRIMARILY FOR HABITATION BY A HUSBAND AND WIFE UNLESS AN ADDITIONAL SHOWING AS PROVIDED IN 5.10 IS MADE.

(b) COMMUNICATIONS.

NO OTHERWISE PRIVILEGED WIRE OR ORAL COMMUNICATION OVERHEARD IN ACCORDANCE WITH OR IN VIOLATION OF THESE STANDARDS SHOULD LOSE ITS PRIVILEGED CHARACTER.

KANSAS CODE

No comparable code provision.

COMMENT

While Kansas is not in conformity with section (a), the evidence rules (K.S.A. 60-426, 60-427, 60-428, 60-429) provide that the fact of overhearing does not destroy a privileged communication so that Kansas is in conformity with section (b).

ABA STANDARD

5.12 ORDERS AND APPLICATIONS; CUSTODY; DESTRUCTION.

ALL ORDERS AND APPLICATIONS SHOULD BE MAINTAINED FOR TEN YEARS IN SUCH PLACES AS THE JUDICIAL OFFICER DIRECTS. THEY SHOULD NOT BE DISCLOSED OR DESTROYED EXCEPT ON JUDICIAL ORDER.

KANSAS CODE

No comparable code provision.

COMMENT

Kansas is not in conformity with the Standard.

#### ABA STANDARD

##### 5.13 AUTHENTICITY.

(a) ELECTRONIC SURVEILLANCE TECHNIQUES EMPLOYED BY LAW ENFORCEMENT OFFICERS FOR THE RECORDING OF COMMUNICATIONS UTTERED IN PRIVATE WITHOUT THE CONSENT OF THE PARTIES SHOULD BE SO EMPLOYED THAT A COMPLETE, ACCURATE AND INTELLIGIBLE RECORD OF THE COMMUNICATION WILL BE OBTAINED.

(b) THE CONTENTS OF ANY WIRE OR ORAL COMMUNICATION OVERHEARD BY ANY MEANS AUTHORIZED BY THESE STANDARDS SHOULD, IF POSSIBLE, BE RECORDED ON TAPE OR WIRE OR OTHER COMPARABLE DEVICE. THE RECORDING OF THE CONTENTS OF ANY WIRE OR ORAL COMMUNICATION AUTHORIZED UNDER THESE STANDARDS SHOULD BE DONE IN SUCH WAY AS WILL PROTECT THE RECORDING FROM EDITING OR OTHER ALTERATIONS.

#### KANSAS CODE

No comparable code provision.

#### COMMENT

Kansas law does not include reference to the type of mechanical or electronic equipment to be used, or to protection of recorded conversation from alteration.

#### ABA STANDARD

##### 5.14 RETURN; RECORD; TIME, SEALING; CUSTODY; DESTRUCTION.

AS SOON AS PRACTICABLE BUT NOT LATER THAN THIRTY DAYS AFTER THE TERMINATION OF THE OVERHEARING OR RECORDING, A RETURN ON THE ORDER OF AUTHORIZATION OR APPROVAL SHOULD BE MADE TO THE JUDICIAL OFFICER. THE RECORDINGS OF OVERHEARD COMMUNICATIONS SHOULD BE SEALED UNTIL SUCH TIME AS THE RECORDINGS OR EVIDENCE DERIVED THEREFROM ARE TO BE RECEIVED INTO EVIDENCE AS PROVIDED IN 2.3(b), EXCEPT THAT DUPLICATE RECORDINGS MAY BE MADE FOR USE OR DISCLOSURE FOR INVESTIGATIVE PURPOSES OR TRIAL PREPARATION UNDER APPROPRIATE SAFEGUARDS. THE PRESENCE OF THE SEAL PROVIDED FOR BY THIS SECTION, OR A SATISFACTORY EXPLANATION FOR THE ABSENCE THEREOF, SHOULD BE A PREREQUISITE FOR THE USE OR DISCLOSURE OF THE CONTENTS OF ANY WIRE OR ORAL COMMUNICATION OR EVIDENCE DERIVED THEREFROM. THE RECORDINGS SHOULD BE MAINTAINED IN SUCH PLACES AND IN SUCH CUSTODY AS THE JUDICIAL OFFICER DIRECTS FOR AT LEAST TEN YEARS AND SHOULD NOT BE DESTROYED EXCEPT ON JUDICIAL ORDER.

#### KANSAS CODE

K.S.A. 22-2515 (1974) cited at 1.1  
supra.

1974 Supplement

#### COMMENT

Kansas is partially in compliance with the Standard. However, there is nothing in the Kansas provision concerning sealing or the time of retention.

#### ABA STANDARD

##### 5.15 INVENTORY; TIME; POSTPONEMENT.

AS SOON AS PRACTICABLE BUT NO LATER THAN NINETY DAYS AFTER THE RETURN IS MADE TO THE JUDICIAL OFFICER OR THE DATE OF AN APPLICATION FOR APPROVAL PROVIDED FOR IN 5.2, WHICH WAS DENIED, THE JUDICIAL OFFICER SHOULD CAUSE TO BE SERVED ON THE PERSON NAMED IN THE ORDER OF AUTHORIZATION OR APPROVAL OR THE APPLICATION FOR SUCH AN APPROVAL AND SUCH OTHER PARTIES TO THE INTERCEPTED COMMUNICATION AS THE JUDICIAL OFFICER MAY DETERMINE IN HIS DISCRETION THAT IT IS IN THE INTEREST OF JUSTICE TO SERVE, AN INVENTORY WHICH SHOULD INCLUDE NOTICE OF -

(i) THE ENTRY OF THE ORDER OR THE MAKING OF THE APPLICATION;

(ii) THE DATE OF THE ENTRY OF THE ORDER OR OF THE DENIAL OF THE APPLICATION;

(iii) THE PERIOD OF AUTHORIZED, APPROVED OR DISAPPROVED OVERHEARING OR RECORDING;

(iv) THE OVERHEARING OR RECORDING, IF ANY, OF COMMUNICATIONS; AND

(v) THE PERIOD, IF ANY, OF ACTUAL OVERHEARING OR RECORDING.

UPON A SHOWING OF GOOD CAUSE MADE TO THE JUDICIAL OFFICER, THE SERVING OF THE INVENTORY SHOULD BE POSTPONED.

#### KANSAS CODE

No comparable code provision.

#### COMMENT

Kansas is not in conformity with the Standard.

#### ABA STANDARD

##### 5.16 DISCLOSURE; USE.

THE DISCLOSURE OR USE BY LAW ENFORCEMENT OFFICERS OF THE CONTENTS OF WIRE OR ORAL COMMUNICATIONS WHICH HAVE BEEN OBTAINED BY MEANS AUTHORIZED BY THESE STANDARDS, OR EVIDENCE DERIVED THEREFROM, SHOULD BE PERMITTED ONLY TO THE EXTENT IT IS IN THE PROPER PERFORMANCE OF THEIR OFFICIAL DUTIES, PROVIDED THAT, WHEN DISCLOSURE IS INVOLVED, SUCH DIS-





#### COMMENT

Kansas is partially in compliance with the Standard. However, there is nothing in the Kansas provision concerning sealing or the time of retention.

#### ABA STANDARD

##### 5.15 INVENTORY; TIME; POSTPONEMENT.

AS SOON AS PRACTICABLE BUT NO LATER THAN NINETY DAYS AFTER THE RETURN IS MADE TO THE JUDICIAL OFFICER OR THE DATE OF AN APPLICATION FOR APPROVAL PROVIDED FOR IN 5.2, WHICH WAS DENIED, THE JUDICIAL OFFICER SHOULD CAUSE TO BE SERVED ON THE PERSON NAMED IN THE ORDER OF AUTHORIZATION OR APPROVAL OR THE APPLICATION FOR SUCH AN APPROVAL AND SUCH OTHER PARTIES TO THE INTERCEPTED COMMUNICATION AS THE JUDICIAL OFFICER MAY DETERMINE IN HIS DISCRETION THAT IT IS IN THE INTEREST OF JUSTICE TO SERVE, AN INVENTORY WHICH SHOULD INCLUDE NOTICE OF -

(i) THE ENTRY OF THE ORDER OR THE MAKING OF THE APPLICATION;

(ii) THE DATE OF THE ENTRY OF THE ORDER OR OF THE DENIAL OF THE APPLICATION;

(iii) THE PERIOD OF AUTHORIZED, APPROVED OR DISAPPROVED OVERHEARING OR RECORDING;

(iv) THE OVERHEARING OR RECORDING, IF ANY, OF COMMUNICATIONS; AND

(v) THE PERIOD, IF ANY, OF ACTUAL OVERHEARING OR RECORDING.

UPON A SHOWING OF GOOD CAUSE MADE TO THE JUDICIAL OFFICER, THE SERVING OF THE INVENTORY SHOULD BE POSTPONED.

#### KANSAS CODE

No comparable code provision.

#### COMMENT

Kansas is not in conformity with the Standard.

#### ABA STANDARD

##### 5.16 DISCLOSURE; USE.

THE DISCLOSURE OR USE BY LAW ENFORCEMENT OFFICERS OF THE CONTENTS OF WIRE OR ORAL COMMUNICATIONS WHICH HAVE BEEN OBTAINED BY MEANS AUTHORIZED BY THESE STANDARDS, OR EVIDENCE DERIVED THEREFROM, SHOULD BE PERMITTED ONLY TO THE EXTENT IT IS IN THE PROPER PERFORMANCE OF THEIR OFFICIAL DUTIES, PROVIDED THAT, WHEN DISCLOSURE IS INVOLVED, SUCH DIS-

CLOSURE IS MADE ONLY TO LAW ENFORCEMENT OFFICERS TO THE EXTENT IT IS IN THE PROPER PERFORMANCE OF THEIR OFFICIAL DUTIES TO RECEIVE IT. ANY PERSON, INCLUDING LAW ENFORCEMENT OFFICERS, SHOULD BE PERMITTED TO MAKE SUCH DISCLOSURES WHILE GIVING TESTIMONY UNDER OATH OR AFFIRMATION IN A CRIMINAL PROCEEDING IN ANY COURT OR IN GRAND JURY PROCEEDING. SUCH COMMUNICATIONS OR EVIDENCE DERIVED THEREFROM SHOULD OTHERWISE BE DISCLOSED OR USED ONLY UPON A SHOWING OF GOOD CAUSE BEFORE A JUDICIAL OFFICER.

#### KANSAS CODE

No comparable code provision.

#### COMMENT

The Kansas code is not in conformity with the Standard.

#### ABA STANDARD

##### 5.17 REPORTS.

###### (a) JUDICIAL REPORTS; TIME; CONTENTS.

JUDICIAL OFFICERS SHOULD MAKE ANNUAL REPORTS TO AN APPROPRIATE AGENCY WHICH SHOULD CONTAIN -

- (i) THE NUMBER OF ORDERS APPLIED FOR;
- (ii) THE KINDS OF ORDERS APPLIED FOR;
- (iii) THE NUMBER OF ORDERS DENIED OR GRANTED AS APPLIED FOR OR AS MODIFIED;
- (iv) THE PERIODS OF TIME OVER WHICH OVERHEARING WAS CONDUCTED OR RECORDINGS WERE MADE;
- (v) THE OFFENSES SPECIFIED IN THE ORDERS OR THE APPLICATIONS WHICH WERE DENIED;
- (vi) THE IDENTITY OF THE PERSONS AUTHORIZING THE APPLICATIONS; AND
- (vii) THE IDENTITY OF THE LAW ENFORCEMENT AGENCY OF THE APPLICANT.

###### (b) PROSECUTIVE REPORTS; TIME; CONTENTS.

PROSECUTING OFFICERS SHOULD MAKE ANNUAL REPORTS TO THE AGENCY SPECIFIED IN (a) WHICH SHOULD CONTAIN -

- (i) THE INFORMATION REQUIRED IN (a) (i)-(vii);
- (ii) A GENERAL DESCRIPTION OF THE OVERHEARING OR RECORDING, SEPARATED BY OFFENSE, INCLUDING:
  - (1) THE CHARACTER AND FREQUENCY OF THE INCRIMINATING COMMUNICATIONS OVERHEARD OR RECORDED;
  - (2) THE CHARACTER AND FREQUENCY OF THE OTHER COMMUNICATIONS OVERHEARD OR RECORDED;
  - (3) THE NUMBER OF PERSONS WHOSE COMMUNICATIONS WERE OVERHEARD OR RECORDED; AND

(4) THE CHARACTER AND AMOUNT OF THE MANPOWER AND OTHER RESOURCES USED IN THE OVERHEARING OR RECORDING;  
(iii) THE NUMBER OF ARRESTS RESULTING FROM THE OVERHEARING OR RECORDING;  
(iv) THE OFFENSES FOR WHICH THE ARRESTS WERE MADE;  
(v) THE NUMBER OF TRIALS RESULTING FROM THE OVERHEARING OR RECORDING;  
(vi) THE NUMBER OF MOTIONS TO SUPPRESS MADE, GRANTED, OR DENIED BASED ON THE OVERHEARING OR RECORDINGS;  
(vii) THE NUMBER OF CONVICTIONS RESULTING FROM THE OVERHEARING OR RECORDING;  
(viii) THE OFFENSES FOR WHICH THE CONVICTIONS WERE OBTAINED.  
(c) PUBLIC REPORTS; TIME; CONTENTS.  
THE AGENCY SPECIFIED IN (a) AND (b) SHOULD MAKE PUBLIC A COMPLETE ANNUAL REPORT BASED ON THE INFORMATION REQUIRED TO BE FILED BY (a) AND (b).

#### KANSAS CODE

No comparable code provision.

#### COMMENT

Kansas is in conformity by virtue of provision of Title 18 U.S.A., Section 2519 which requires all judges to report certain facts concerning the issuance or denial of wiretap authorizations to the administrative office of the United States Courts.

#### ABA STANDARD

##### 5.18 ADMINISTRATIVE REGULATIONS.

LAW ENFORCEMENT AGENCIES SHOULD ADOPT ADMINISTRATIVE REGULATIONS, INCLUDING STANDARDS, PROCEDURES AND SANCTIONS, DEALING WITH THE VARIOUS ASPECTS OF THE USE OF ELECTRONIC SURVEILLANCE TECHNIQUES. THE REGULATIONS, AMONG OTHER THINGS, SHOULD

- (i) LIMIT THE NUMBER OF AGENTS AUTHORIZED TO EMPLOY THE TECHNIQUES;
  - (ii) SPECIFY THE CIRCUMSTANCES UNDER WHICH THE TECHNIQUES MAY BE USED, GIVING PREFERENCE TO THOSE WHICH INVADE PRIVACY LEAST;
  - (iii) SET OUT THE MANNER IN WHICH THE TECHNIQUES MUST BE USED TO ASSURE AUTHENTICITY;
  - (iv) PROVIDE FOR THE CLOSE SUPERVISION OF AGENTS AUTHORIZED TO EMPLOY THE TECHNIQUES;
  - (v) CIRCUMSCRIBE THE ACQUISITION OF, CUSTODY OF, AND ACCESS TO ELECTRONIC EQUIPMENT BY AGENTS; AND
  - (vi) RESTRICT THE TRANSCRIPTION OF, CUSTODY OF, AND ACCESS TO OVERHEARD OR RECORDED COMMUNICATIONS BY AGENTS.
- MATERIALS ON THE REGULATIONS SHOULD BE INCORPORATED INTO GENERAL AND SPECIAL TRAINING PROGRAMS OF THE AGENCY.

KANSAS CODE

No comparable code provision.

COMMENT

Kansas code not in conformity. The extent of compliance in individual jurisdictions is subject to the discretion of the agency.