

SENATE BILL No. 360

By Committee on Judiciary

2-1

1 AN ACT concerning the open records act; relating to copies of records;
2 disclosure of law enforcement recordings using a body camera or
3 vehicle camera; amending K.S.A. 2017 Supp. 45-219 and 45-254 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. 2017 Supp. 45-219 is hereby amended to read as
8 follows: 45-219. (a) Any person may make abstracts or obtain copies of
9 any public record to which such person has access under this act. If copies
10 are requested, ~~the public agency may require a written request and advance~~
11 ~~payment of the prescribed fee~~ *payment of copying fees may be required*
12 *prior to the making of copies.* A public agency shall ~~not be required to~~
13 ~~provide copies of~~ *public records maintained on computer facilities,* radio
14 or recording tapes or discs, video tapes or films, pictures, slides, graphics,
15 illustrations or similar audio or visual items or devices, ~~unless if~~
16 *duplication equipment is available or if* such items or devices were shown
17 or played to a public meeting of the governing body thereof, ~~but the.~~ A
18 public agency shall not be required to provide such items or devices which
19 are copyrighted by a person other than the public agency.

20 (b) Copies of public records shall be made while the records are in
21 the possession, custody and control of the custodian or a person designated
22 by the custodian and shall be made under the supervision of such
23 custodian or person. When practical, copies shall be made in the place
24 where the records are kept. If it is impractical to do so, the custodian shall
25 allow arrangements to be made for use of other facilities. If it is necessary
26 to use other facilities for copying, the cost thereof shall be paid by the
27 person desiring a copy of the records. In addition, the public agency may
28 charge the same fee for the services rendered in supervising the copying as
29 for furnishing copies under subsection (c) and may establish a reasonable
30 schedule of times for making copies at other facilities.

31 (c) Except as provided by subsection (f) or where fees for inspection
32 or for copies of a public record are prescribed by statute, each public
33 agency may prescribe reasonable fees for providing access to or furnishing
34 copies of public records, subject to the following:

35 (1) In the case of fees for copies of records, the fees shall not exceed
36 the actual cost of furnishing copies, including the cost of staff time

1 required to make the information available.

2 (2) In the case of fees for providing access to records maintained on
3 computer facilities, the fees shall include only the cost of any computer
4 services, including staff time required.

5 (3) Fees for access to or copies of public records of public agencies
6 within the legislative branch of the state government shall be established in
7 accordance with K.S.A. 46-1207a, and amendments thereto.

8 (4) Fees for access to or copies of public records of public agencies
9 within the judicial branch of the state government shall be established in
10 accordance with rules of the supreme court.

11 (5) Fees for access to or copies of public records of a public agency
12 within the executive branch of the state government shall be established by
13 the agency head. Any person requesting records may appeal the
14 reasonableness of the fees charged for providing access to or furnishing
15 copies of such records to the secretary of administration whose decision
16 shall be final. A fee for copies of public records which is equal to or less
17 than \$.25 per page shall be deemed a reasonable fee.

18 (d) Except as otherwise authorized pursuant to K.S.A. 75-4215, and
19 amendments thereto, each public agency within the executive branch of
20 the state government shall remit all moneys received by or for it from fees
21 charged pursuant to this section to the state treasurer in accordance with
22 K.S.A. 75-4215, and amendments thereto. Unless otherwise specifically
23 provided by law, the state treasurer shall deposit the entire amount thereof
24 in the state treasury and credit the same to the state general fund or an
25 appropriate fee fund as determined by the agency head.

26 (e) Each public agency of a political or taxing subdivision shall remit
27 all moneys received by or for it from fees charged pursuant to this act to
28 the treasurer of such political or taxing subdivision at least monthly. Upon
29 receipt of any such moneys, such treasurer shall deposit the entire amount
30 thereof in the treasury of the political or taxing subdivision and credit the
31 same to the general fund thereof, unless otherwise specifically provided by
32 law.

33 (f) Any person who is a certified shorthand reporter may charge fees
34 for transcripts of such person's notes of judicial or administrative
35 proceedings in accordance with rates established pursuant to rules of the
36 Kansas supreme court.

37 (g) Nothing in the open records act shall require a public agency to
38 electronically make copies of public records by allowing a person to obtain
39 copies of a public record by inserting, connecting or otherwise attaching
40 an electronic device provided by such person to the computer or other
41 electronic device of the public agency.

42 Sec. 2. K.S.A. 2017 Supp. 45-254 is hereby amended to read as
43 follows: 45-254. (a) Every audio or video recording made and retained by

1 law enforcement using a body camera or a vehicle camera shall be
2 considered a criminal investigation record as defined in K.S.A. 45-217,
3 and amendments thereto. The provisions of this subsection shall expire on
4 July 1, 2021, unless the legislature reviews and reenacts this provision
5 pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2021.

6 (b) In addition to any disclosure authorized pursuant to the open
7 records act, K.S.A. 45-215 et seq., and amendments thereto, a person
8 described in subsection (c) may request to listen to an audio recording or
9 to view a video recording made by a body camera or a vehicle camera. The
10 law enforcement agency shall allow the person to listen to the requested
11 audio recording or to view the requested video recording *within 24 hours*
12 *after making the request*, and may charge a reasonable fee for such
13 services provided by the law enforcement agency.

14 (c) Any of the following may make a request under subsection (b):

15 (1) A person who is a subject of the recording;

16 (2) a parent or legal guardian of a person under 18 years of age who
17 is a subject of the recording;

18 (3) an attorney for a person described in subsection (c)(1) or (c)(2);
19 and

20 (4) an heir at law, an executor or an administrator of a decedent, or
21 *an individual who has secured a written release from the next of kin of a*
22 *decedent*, when the decedent is a subject of the recording.

23 (d) *A law enforcement agency shall disclose any audio or video*
24 *recording made and retained by the agency using a body camera or a*
25 *vehicle camera within 30 days after a request is made by any person, if the*
26 *recording depicts or describes:*

27 (1) *The discharge of a firearm by a law enforcement officer in the*
28 *course of duty, other than the discharge of a firearm for training purposes,*
29 *or the killing of an animal that is sick, injured or dangerous; or*

30 (2) *the use of force by a law enforcement officer that results in great*
31 *bodily harm or death.*

32 (e) (1) *A law enforcement agency shall redact or obscure specific*
33 *portions of any audio or video recording before disclosure that:*

34 (A) *Depicts the death of a person, a dead body, or clearly visible acts*
35 *of severe violence or great bodily harm against a person, unless the death*
36 *or act was caused by a law enforcement officer;*

37 (B) *depicts nudity or sexual conduct as defined in K.S.A. 2017 Supp.*
38 *21-6402, and amendments thereto;*

39 (C) *reveals the identity of any confidential source or undercover*
40 *agent;*

41 (D) *reveals confidential investigative techniques or procedures not*
42 *known to the general public;*

43 (E) *endangers the life or physical safety of any person;*

1 (F) reveals the name, address, phone number or any other
2 information that specifically and individually identifies the victim of any
3 sexual offense in article 35 of chapter 21 of the Kansas Statutes
4 Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas
5 Statutes Annotated, and amendments thereto;

6 (G) identifies a minor under the age of 16 or undermines the
7 confidentiality requirements for juvenile records as provided in chapter 38
8 of the Kansas Statutes Annotated, and amendments thereto;

9 (H) includes confidential medical information or personal
10 information as defined in K.S.A. 2017 Supp. 50-7a01, and amendments
11 thereto; or

12 (I) reveals the name or license plate number of a person not arrested,
13 cited, charged or issued a written warning.

14 (2) This subsection shall not apply to requests made by a person
15 described in subsection (c).

16 (f) (1) A law enforcement agency may redact or obscure specific
17 portions of any audio or video recording before disclosure that reveals the
18 identify of a law enforcement officer who is subject to an internal
19 investigation as a result of an event depicted in the recording, except as
20 provided in subsection (f)(2).

21 (2) (A) A law enforcement agency shall not redact the identity of a
22 law enforcement officer after the agency has concluded the investigation
23 or rendered a decision as to final disciplinary action, and the records
24 previously withheld, redacted or obscured under this section shall be made
25 available for public inspection and copying.

26 (B) If such investigation lasts for longer than 270 days, video and
27 audio recordings not disclosed, redacted or obscured under this section
28 shall be made available for public inspection and copying.

29 (g) As used in this section:

30 (1) "Body camera" means a device that is worn by a law enforcement
31 officer that electronically records audio or video of such officer's activities.

32 (2) "Great bodily harm" means bodily injury that creates a
33 substantial risk of death or causes serious, permanent disfigurement or
34 protracted loss or impairment of the function of any body part or organ.

35 (3) "Heir at law" means: (A) The spouse of the decedent, if living; (B)
36 if there is no living spouse of the decedent, an adult child of the decedent,
37 if living; or (C) if there is no living spouse or adult child, a parent of the
38 decedent, if living. It shall be the responsibility of the heir at law to show
39 proof of the familial relationship.

40 (4) "Vehicle camera" means a device that is attached to a law
41 enforcement vehicle that electronically records audio or video of law
42 enforcement officers' activities.

43 Sec. 3. K.S.A. 2017 Supp. 45-219 and 45-254 are hereby repealed.

1 Sec. 4. This act shall take effect and be in force from and after its
2 publication in the statute book.