

## SENATE BILL No. 598

By Committee on Judiciary

2-14

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AN ACT concerning civil procedure; relating to evidence; identity of informers; subpoenas; amending K.S.A. 22-3214 and 60-436 and K.S.A. 2001 Supp. 22-3212 and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 2001 Supp. 22-3212 is hereby amended to read as follows: 22-3212. (a) Upon request, the prosecuting attorney shall permit the defendant to inspect and copy or photograph the following, if relevant: (1) Written or recorded statements or confessions made by the defendant, or copies thereof, which are or have been in the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney; (2) results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney; (3) recorded testimony of the defendant before a grand jury or at an inquisition; and (4) memoranda of any oral confession made by the defendant and a list of the witnesses to such confession, the existence of which is known, or by the exercise of due diligence may become known to the prosecuting attorney.

(b) Upon request, the prosecuting attorney shall permit the defendant to inspect and copy or photograph books, papers, documents, tangible objects, buildings or places, or copies, or portions thereof, which are or have been within the possession, custody or control of the prosecution, and which are material to the case and will not place an unreasonable burden upon the prosecution. Except as provided in subsections (a)(2) and (a)(4), this section does not authorize the discovery or inspection of reports, memoranda or other internal government documents made by officers in connection with the investigation or prosecution of the case, or of statements made by state witnesses or prospective state witnesses, other than the defendant, except as may be provided by law.

(c) If the defendant seeks discovery and inspection under subsection (a)(2) or subsection (b), the defendant shall permit the attorney for the prosecution to inspect and copy or photograph scientific or medical re-

1 ports, books, papers, documents, tangible objects, or copies or portions  
2 thereof, which the defendant intends to produce at any hearing, and  
3 which are material to the case and will not place an unreasonable burden  
4 on the defense. Except as to scientific or medical reports, this subsection  
5 does not authorize the discovery or inspection of reports, memoranda or  
6 other internal defense documents made by the defendant, or the defend-  
7 ant's attorneys or agents in connection with the investigation or defense  
8 of the case, or of statements made by the defendant, or by prosecution  
9 or defense witnesses, or by prospective prosecution or defense witnesses,  
10 to the defendant, the defendant's agents or attorneys.

11 (d) The prosecuting attorney and the defendant shall cooperate in  
12 discovery and reach agreement on the time, place and manner of making  
13 the discovery and inspection permitted, so as to avoid the necessity for  
14 court intervention.

15 (e) Upon a sufficient showing the court may at any time order that  
16 the discovery or inspection be denied, restricted or deferred or make such  
17 other order as is appropriate. Upon motion, the court may permit either  
18 party to make such showing, in whole or in part, in the form of a written  
19 statement to be inspected privately by the court. If the court enters an  
20 order granting relief following such a private showing, the entire text of  
21 the statement shall be sealed and preserved in the records of the court  
22 to be made available to the appellate court in the event of an appeal.

23 (f) Discovery under this section must be completed no later than 20  
24 days after arraignment or at such reasonable later time as the court may  
25 permit.

26 (g) If, subsequent to compliance with an order issued pursuant to this  
27 section, and prior to or during trial, a party discovers additional material  
28 previously requested or ordered which is subject to discovery or inspec-  
29 tion under this section, the party shall promptly notify the other party or  
30 the party's attorney or the court of the existence of the additional material.  
31 If at any time during the course of the proceedings it is brought to the  
32 attention of the court that a party has failed to comply with this section  
33 or with an order issued pursuant to this section, the court may order such  
34 party to permit the discovery or inspection of materials not previously  
35 disclosed, grant a continuance, or prohibit the party from introducing in  
36 evidence the material not disclosed, or it may enter such other order as  
37 it deems just under the circumstances.

38 (h) For crimes committed on or after July 1, 1993, the prosecuting  
39 attorney shall provide all prior convictions of the defendant known to the  
40 prosecuting attorney that would affect the determination of the defend-  
41 ant's criminal history for purposes of sentencing under a presumptive  
42 sentencing guidelines system as provided in K.S.A. 21-4701 *et seq.* and  
43 amendments thereto.

1 (i) The prosecuting attorney and defendant shall be permitted to in-  
2 spect and copy any juvenile files and records of the defendant for the  
3 purpose of discovering and verifying the criminal history of the defendant.

4 (j) *The court shall order that discovery or inspection be denied when*  
5 *such discovery or inspection is directed toward any third party or entity*  
6 *that was part of the transmitting of any records or statements in any form,*  
7 *papers, documents, or any materials or information which could individ-*  
8 *ually or collectively be used to reveal the identity of any informer as*  
9 *described in K.S.A. 60-436, and amendments thereto.*

10 Sec. 2. K.S.A. 22-3214 is hereby amended to read as follows: 22-  
11 3214. (1) The prosecution and any person charged with a crime shall be  
12 entitled to the use of subpoenas and other compulsory process to obtain  
13 the attendance of witnesses, *except that subpoenas and other compulsory*  
14 *process shall not be used to compel attendance of any third party or entity*  
15 *that was part of the transmitting of any records or statements in any form,*  
16 *papers, documents, or any materials or information which could individ-*  
17 *ually or collectively be used to reveal the identity of any informer as*  
18 *described in K.S.A. 60-436, and amendments thereto.* Except as otherwise  
19 provided by law, such subpoenas and other compulsory process shall be  
20 issued and served in the same manner and the disobedience thereof pun-  
21 ished the same as in civil cases.

22 (2) All courts having criminal jurisdiction shall have the power to  
23 compel the attendance of witnesses from any county in the state to testify  
24 either for the prosecution or for the defendant and to direct law enforce-  
25 ment officers to serve subpoenas to obtain the attendance of witnesses at  
26 all proceedings conducted by the court anytime after the arrest of any  
27 person.

28 (3) It shall not be necessary to tender any fee or mileage allowance  
29 to any witness when he is served with a subpoena to attend any criminal  
30 case and give testimony either on behalf of the prosecution or the  
31 defendant.

32 Sec. 3. K.S.A. 60-436 is hereby amended to read as follows: 60-436.  
33 A witness has a privilege to refuse to disclose the identity of a person who  
34 has furnished information purporting to disclose a violation of a provision  
35 of the laws of this state or of the United States to a representative of the  
36 state or the United States or a governmental division thereof, charged  
37 with the duty of enforcing that provision, or to a member of a crime  
38 stoppers chapter recognized by the Kansas state crime stoppers organi-  
39 zation, and evidence thereof is inadmissible, unless the judge finds that:  
40 (a) the identity of the person furnishing the information has already been  
41 otherwise disclosed; or (b) disclosure of such person's identity is essential  
42 to assure a fair determination of the issues. The privilege extends to doc-  
43 umenting records as well as testimony *and any third party or entity that*

1 *was part of the transmitting of any records or statements in any form,*  
2 *papers, documents or any materials or information which could individ-*  
3 *ually or collectively be used to reveal the identity of such person.*

4 Sec. 4. K.S.A. 22-3214 and 60-436 and K.S.A. 2001 Supp. 22-3212  
5 are hereby repealed.

6 Sec. 5. This act shall take effect and be in force from and after its  
7 publication in the statute book.

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