

SENATE BILL No. 488

By Committee on Ways and Means

2-10

AN ACT concerning victim identity protection; amending K.S.A. 45-217 and K.S.A. 2003 Supp. 45-221 and repealing the existing sections.

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

New Section 1. This act shall be known and may be cited as the crime victims protection act.

New Sec. 2. (a) All court records, including testimony from witnesses, that reveal the photograph, name or address of the victim of an alleged offense described in article 35 of chapter 21 of Kansas Statutes Annotated, K.S.A. 21-3602, 21-3603 and 21-3609, and amendments thereto, are confidential and exempt from the provisions of K.S.A. 45-215, *et seq.*, and amendments thereto, and may not be made public if, upon a showing to the trial court with jurisdiction over the alleged offense, the state or the victim demonstrates that:

- (1) The identity of the victim is not already known in the community;
- (2) the victim has not voluntarily called public attention to the offense;
- (3) the identity of the victim has not otherwise become a reasonable subject of public concern;
- (4) the disclosure of the victim's identity would be offensive to a reasonable person; and
- (5) the disclosure of the victim's identity would:
 - (A) Endanger the victim because the assailant has not been apprehended and is not otherwise known to the victim;
 - (B) endanger the victim because of the likelihood of retaliation, harassment or intimidation;
 - (C) cause severe emotional or mental harm to the victim;
 - (D) make the victim unwilling to testify as a witness; or
 - (E) be inappropriate for other good cause shown.

(b) If the court, pursuant to subsection (a), declares that all court records or other information that reveals the photograph, name or address of the victim are confidential and exempt from K.S.A. 45-215, *et seq.*, and amendments thereto, the defendant charged with the crime described in article 35 of chapter 21 of Kansas Statutes Annotated, K.S.A. 21-3602, 21-3603 and 21-3609, and amendments thereto, may apply to the trial

1 court for an order of disclosure of identifying information concerning the
2 victim in order to prepare the defense. This paragraph may not be con-
3 strued to prevent the disclosure of the victim's identity to the defendant;
4 however, the defendant may not disclose the victim's identity to any per-
5 son other than the defendant's attorney or any other person directly in-
6 volved in the preparation of the defense. A willful and knowing disclosure
7 of the identity of the victim to any other person by the defendant con-
8 stitutes contempt.

9 (c) The state may use a pseudonym instead of the victim's name to
10 designate the victim of a crime described in article 35 of chapter 21 of
11 Kansas Statutes Annotated, K.S.A. 21-3602, 21-3603 and 21-3609, and
12 amendments thereto, in all court records and records of court
13 proceedings.

14 (d) The protection of this section may be waived by the victim of the
15 alleged offense in a writing filed with the court, in which the victim con-
16 sents to the use or release of identifying information during court pro-
17 ceedings and in the records of court proceedings.

18 (e) This section does not prohibit the publication or broadcast of the
19 substance of trial testimony in a prosecution for an offense described in
20 article 35 of chapter 21 of Kansas Statutes Annotated, K.S.A. 21-3602,
21 21-3603 and 21-3609, and amendments thereto, but the publication or
22 broadcast may not contain an identifying photograph, an identifiable voice
23 or the name or address of the victim unless the victim has consented in
24 writing to the publication and filed such consent with the court or unless
25 the court has declared such records not confidential and exempt as pro-
26 vided in subsection (a).

27 (f) A willful or knowing violation of this section or a willful and know-
28 ing failure to obey any court order issued under this section constitutes
29 contempt.

30 New Sec. 3. (a) An entity or individual who communicates to others,
31 prior to open judicial proceedings, the name, address or other specific
32 identifying information concerning the victim of any sexual offense under
33 article 35 of chapter 21 of Kansas Statutes Annotated, K.S.A. 21-3602,
34 21-3603 and 21-3609, and amendments thereto, shall be liable to that
35 victim for all damages reasonably necessary to compensate the victim or
36 any injuries suffered as a result of such communication.

37 (b) The victim shall not be able to maintain a cause of action unless
38 the victim is able to show that such communication was intentional and
39 was done with reckless disregard for the highly offensive nature of the
40 publication.

41 New Sec. 4. A public employee or officer who has access to the pho-
42 tograph, name or address of a person who is alleged to be the victim of
43 an offense described in article 35 of chapter 21 of Kansas Statutes An-

1 notated, K.S.A. 21-3602, 21-3603 and 21-3609, and amendments thereto,
2 may not willfully and knowingly disclose it to a person who is not assisting
3 in the investigation or prosecution of the alleged offense or to any person
4 other than the defendant, the defendant's attorney or a person specified
5 in an order entered by the court having jurisdiction of the alleged offense
6 or to organizations authorized to receive the information pursuant to sub-
7 section (a)(10) of K.S.A. 45-221, and amendments thereto.

8 Sec. 5. K.S.A. 45-217 is hereby amended to read as follows: 45-217.
9 As used in the open records act, unless the context otherwise requires:

10 (a) "Business day" means any day other than a Saturday, Sunday or
11 day designated as a holiday by the congress of the United States, by the
12 legislature or governor of this state or by the respective political subdivi-
13 sion of this state.

14 (b) "Criminal investigation records" means records of an investiga-
15 tory agency or criminal justice agency as defined by K.S.A. 22-4701, and
16 amendments thereto, compiled in the process of preventing, detecting or
17 investigating violations of criminal law, but does not include police blotter
18 entries, court records, rosters of inmates of jails or other correctional or
19 detention facilities or records pertaining to violations of any traffic law,
20 other than vehicular homicide, as defined by K.S.A. 21-3405, and amend-
21 ments thereto, *unless the record may reveal the identity of a person who*
22 *is a victim of any sexual offense, including a sexual offense described in*
23 *article 35 of chapter 21 of Kansas Statutes Annotated, K.S.A. 21-3602,*
24 *21-3603 and 21-3609, and amendments thereto.*

25 (c) "Custodian" means the official custodian or any person designated
26 by the official custodian to carry out the duties of custodian of this act.

27 (d) "Official custodian" means any officer or employee of a public
28 agency who is responsible for the maintenance of public records, regard-
29 less of whether such records are in the officer's or employee's actual
30 personal custody and control.

31 (e) (1) "Public agency" means the state or any political or taxing sub-
32 division of the state or any office, officer, agency or instrumentality
33 thereof, or any other entity receiving or expending and supported in
34 whole or in part by the public funds appropriated by the state or by public
35 funds of any political or taxing subdivision of the state.

36 (2) "Public agency" shall not include: (A) Any entity solely by reason
37 of payment from public funds for property, goods or services of such
38 entity; (B) any municipal judge, judge of the district court, judge of the
39 court of appeals or justice of the supreme court; or (C) any officer or
40 employee of the state or political or taxing subdivision of the state if the
41 state or political or taxing subdivision does not provide the officer or
42 employee with an office which is open to the public at least 35 hours a
43 week.

1 (f) (1) "Public record" means any recorded information, regardless
2 of form or characteristics, which is made, maintained or kept by or is in
3 the possession of any public agency including, but not limited to, an agree-
4 ment in settlement of litigation involving the Kansas public employees
5 retirement system and the investment of moneys of the fund.

6 (2) "Public record" shall not include records which are owned by a
7 private person or entity and are not related to functions, activities, pro-
8 grams or operations funded by public funds or records which are made,
9 maintained or kept by an individual who is a member of the legislature
10 or of the governing body of any political or taxing subdivision of the state.

11 (3) "Public record" shall not include records of employers related to
12 the employer's individually identifiable contributions made on behalf of
13 employees for workers compensation, social security, unemployment in-
14 surance or retirement. The provisions of this subsection shall not apply
15 to records of employers of lump-sum payments for contributions as de-
16 scribed in this subsection paid for any group, division or section of an
17 agency.

18 (g) "Undercover agent" means an employee of a public agency re-
19 sponsible for criminal law enforcement who is engaged in the detection
20 or investigation of violations of criminal law in a capacity where such
21 employee's identity or employment by the public agency is secret.

22 Sec. 6. K.S.A. 2003 Supp. 45-221 is hereby amended to read as fol-
23 lows: 45-221. (a) Except to the extent disclosure is otherwise required by
24 law, a public agency shall not be required to disclose:

25 (1) Records the disclosure of which is specifically prohibited or re-
26 stricted by federal law, state statute or rule of the Kansas supreme court
27 or the disclosure of which is prohibited or restricted pursuant to specific
28 authorization of federal law, state statute or rule of the Kansas supreme
29 court to restrict or prohibit disclosure.

30 (2) Records which are privileged under the rules of evidence, unless
31 the holder of the privilege consents to the disclosure.

32 (3) Medical, psychiatric, psychological or alcoholism or drug depend-
33 ency treatment records which pertain to identifiable patients.

34 (4) Personnel records, performance ratings or individually identifi-
35 able records pertaining to employees or applicants for employment, except
36 that this exemption shall not apply to the names, positions, salaries and
37 lengths of service of officers and employees of public agencies once they
38 are employed as such.

39 (5) Information which would reveal the identity of any undercover
40 agent or any informant reporting a specific violation of law.

41 (6) Letters of reference or recommendation pertaining to the char-
42 acter or qualifications of an identifiable individual.

43 (7) Library, archive and museum materials contributed by private

1 persons, to the extent of any limitations imposed as conditions of the
2 contribution.

3 (8) Information which would reveal the identity of an individual who
4 lawfully makes a donation to a public agency, if anonymity of the donor
5 is a condition of the donation.

6 (9) Testing and examination materials, before the test or examination
7 is given or if it is to be given again, or records of individual test or ex-
8 amination scores, other than records which show only passage or failure
9 and not specific scores.

10 (10) Criminal investigation records, ~~except that~~

11 (A) *Unless* the district court, in an action brought pursuant to K.S.A.
12 45-222, and amendments thereto, ~~may order~~ *orders* disclosure of such
13 records, subject to such conditions as the court may impose, ~~if because~~
14 the court finds that disclosure:

15 ~~(A)~~ (i) Is in the public interest;

16 ~~(B)~~ (ii) would not interfere with any prospective law enforcement
17 action;

18 ~~(C)~~ (iii) would not reveal the identity of any confidential source or
19 undercover agent;

20 ~~(D)~~ (iv) would not reveal confidential investigative techniques or pro-
21 cedures not known to the general public;

22 ~~(E)~~ (v) would not endanger the life or physical safety of any person;
23 and

24 ~~(F)~~ (vi) would not reveal the name, address, phone number or any
25 other information which specifically and individually identifies the victim
26 of any sexual offense *described* in article 35 of chapter 21 of the Kansas
27 Statutes Annotated, K.S.A. 21-3602, 21-3603 and 21-3609 and amend-
28 ments thereto.

29 (B) (i) *The district court may disclose information that may reveal*
30 *the identity of an alleged victim of any sexual offense described in article*
31 *35 of chapter 21 of Kansas Statutes Annotated, K.S.A. 21-3602, 21-3603*
32 *and 21-3609, and amendments thereto, to a person who has been charged*
33 *with a sexual offense against the alleged victim.*

34 (ii) *Documents required by law or agency rule or regulation to be*
35 *given to the person arrested may be maintained in a confidential manner*
36 *and except from subsection (B)(i) until released at trial if it is found that*
37 *the release of such information would:*

38 (1) *Be defamatory to the good name of the victim or witness or would*
39 *jeopardize the safety of such victim or witness; and*

40 (2) *impair the ability of the state to locate or prosecute a codefendant.*

41 (11) Records of agencies involved in administrative adjudication or
42 civil litigation, compiled in the process of detecting or investigating vio-
43 lations of civil law or administrative rules and regulations, if disclosure

1 would interfere with a prospective administrative adjudication or civil
2 litigation or reveal the identity of a confidential source or undercover
3 agent.

4 (12) Records of emergency or security information or procedures of
5 a public agency, or plans, drawings, specifications or related information
6 for any building or facility which is used for purposes requiring security
7 measures in or around the building or facility or which is used for the
8 generation or transmission of power, water, fuels or communications, if
9 disclosure would jeopardize security of the public agency, building or
10 facility.

11 (13) The contents of appraisals or engineering or feasibility estimates
12 or evaluations made by or for a public agency relative to the acquisition
13 of property, prior to the award of formal contracts therefor.

14 (14) Correspondence between a public agency and a private individ-
15 ual, other than correspondence which is intended to give notice of an
16 action, policy or determination relating to any regulatory, supervisory or
17 enforcement responsibility of the public agency or which is widely dis-
18 tributed to the public by a public agency and is not specifically in response
19 to communications from such a private individual.

20 (15) Records pertaining to employer-employee negotiations, if dis-
21 closure would reveal information discussed in a lawful executive session
22 under K.S.A. 75-4319, and amendments thereto.

23 (16) Software programs for electronic data processing and documen-
24 tation thereof, but each public agency shall maintain a register, open to
25 the public, that describes:

26 (A) The information which the agency maintains on computer facil-
27 ities; and

28 (B) the form in which the information can be made available using
29 existing computer programs.

30 (17) Applications, financial statements and other information sub-
31 mitted in connection with applications for student financial assistance
32 where financial need is a consideration for the award.

33 (18) Plans, designs, drawings or specifications which are prepared by
34 a person other than an employee of a public agency or records which are
35 the property of a private person.

36 (19) Well samples, logs or surveys which the state corporation com-
37 mission requires to be filed by persons who have drilled or caused to be
38 drilled, or are drilling or causing to be drilled, holes for the purpose of
39 discovery or production of oil or gas, to the extent that disclosure is limited
40 by rules and regulations of the state corporation commission.

41 (20) Notes, preliminary drafts, research data in the process of anal-
42 ysis, unfunded grant proposals, memoranda, recommendations or other
43 records in which opinions are expressed or policies or actions are pro-

1 posed, except that this exemption shall not apply when such records are
2 publicly cited or identified in an open meeting or in an agenda of an open
3 meeting.

4 (21) Records of a public agency having legislative powers, which re-
5 cords pertain to proposed legislation or amendments to proposed legis-
6 lation, except that this exemption shall not apply when such records are:

7 (A) Publicly cited or identified in an open meeting or in an agenda
8 of an open meeting; or

9 (B) distributed to a majority of a quorum of any body which has au-
10 thority to take action or make recommendations to the public agency with
11 regard to the matters to which such records pertain.

12 (22) Records of a public agency having legislative powers, which re-
13 cords pertain to research prepared for one or more members of such
14 agency, except that this exemption shall not apply when such records are:

15 (A) Publicly cited or identified in an open meeting or in an agenda
16 of an open meeting; or

17 (B) distributed to a majority of a quorum of any body which has au-
18 thority to take action or make recommendations to the public agency with
19 regard to the matters to which such records pertain.

20 (23) Library patron and circulation records which pertain to identi-
21 fiable individuals.

22 (24) Records which are compiled for census or research purposes and
23 which pertain to identifiable individuals.

24 (25) Records which represent and constitute the work product of an
25 attorney.

26 (26) Records of a utility or other public service pertaining to individ-
27 ually identifiable residential customers of the utility or service, except that
28 information concerning billings for specific individual customers named
29 by the requester shall be subject to disclosure as provided by this act.

30 (27) Specifications for competitive bidding, until the specifications
31 are officially approved by the public agency.

32 (28) Sealed bids and related documents, until a bid is accepted or all
33 bids rejected.

34 (29) Correctional records pertaining to an identifiable inmate or re-
35 lease, except that:

36 (A) The name; photograph and other identifying information; sen-
37 tence data; parole eligibility date; custody or supervision level; disciplinary
38 record; supervision violations; conditions of supervision, excluding
39 requirements pertaining to mental health or substance abuse counseling;
40 location of facility where incarcerated or location of parole office main-
41 taining supervision and address of a releasee whose crime was committed
42 after the effective date of this act shall be subject to disclosure to any
43 person other than another inmate or releasee, except that the disclosure

1 of the location of an inmate transferred to another state pursuant to the
2 interstate corrections compact shall be at the discretion of the secretary
3 of corrections;

4 (B) the ombudsman of corrections, the attorney general, law enforce-
5 ment agencies, counsel for the inmate to whom the record pertains and
6 any county or district attorney shall have access to correctional records to
7 the extent otherwise permitted by law;

8 (C) the information provided to the law enforcement agency pursu-
9 ant to the sex offender registration act, K.S.A. 22-4901, *et seq.*, and
10 amendments thereto, shall be subject to disclosure to any person, except
11 that the name, address, telephone number or any other information which
12 specifically and individually identifies the victim of any offender required
13 to register as provided by the Kansas offender registration act, K.S.A. 22-
14 4901 *et seq.* and amendments thereto, shall not be disclosed; and

15 (D) records of the department of corrections regarding the financial
16 assets of an offender in the custody of the secretary of corrections shall
17 be subject to disclosure to the victim, or such victim's family, of the crime
18 for which the inmate is in custody as set forth in an order of restitution
19 by the sentencing court.

20 (30) Public records containing information of a personal nature
21 where the public disclosure thereof would constitute a clearly unwar-
22 ranted invasion of personal privacy.

23 (31) Public records pertaining to prospective location of a business
24 or industry where no previous public disclosure has been made of the
25 business' or industry's interest in locating in, relocating within or expand-
26 ing within the state. This exception shall not include those records per-
27 taining to application of agencies for permits or licenses necessary to do
28 business or to expand business operations within this state, except as
29 otherwise provided by law.

30 (32) Engineering and architectural estimates made by or for any pub-
31 lic agency relative to public improvements.

32 (33) Financial information submitted by contractors in qualification
33 statements to any public agency.

34 (34) Records involved in the obtaining and processing of intellectual
35 property rights that are expected to be, wholly or partially vested in or
36 owned by a state educational institution, as defined in K.S.A. 76-711, and
37 amendments thereto, or an assignee of the institution organized and ex-
38 isting for the benefit of the institution.

39 (35) Any report or record which is made pursuant to K.S.A. 65-4922,
40 65-4923 or 65-4924, and amendments thereto, and which is privileged
41 pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

42 (36) Information which would reveal the precise location of an ar-
43 chaeological site.

1 (37) Any financial data or traffic information from a railroad company,
2 to a public agency, concerning the sale, lease or rehabilitation of the
3 railroad's property in Kansas.

4 (38) Risk-based capital reports, risk-based capital plans and corrective
5 orders including the working papers and the results of any analysis filed
6 with the commissioner of insurance in accordance with K.S.A. 40-2c20
7 and 40-2d20 and amendments thereto.

8 (39) Memoranda and related materials required to be used to support
9 the annual actuarial opinions submitted pursuant to subsection (b) of
10 K.S.A. 40-409, and amendments thereto.

11 (40) Disclosure reports filed with the commissioner of insurance un-
12 der subsection (a) of K.S.A. 40-2,156, and amendments thereto.

13 (41) All financial analysis ratios and examination synopses concerning
14 insurance companies that are submitted to the commissioner by the na-
15 tional association of insurance commissioners' insurance regulatory infor-
16 mation system.

17 (42) Any records the disclosure of which is restricted or prohibited
18 by a tribal-state gaming compact.

19 (43) Market research, market plans, business plans and the terms and
20 conditions of managed care or other third party contracts, developed or
21 entered into by the university of Kansas medical center in the operation
22 and management of the university hospital which the chancellor of the
23 university of Kansas or the chancellor's designee determines would give
24 an unfair advantage to competitors of the university of Kansas medical
25 center.

26 (44) The amount of franchise tax paid to the secretary of state by
27 domestic corporations, foreign corporations, domestic limited liability
28 companies, foreign limited liability companies, domestic limited partner-
29 ship, foreign limited partnership, domestic limited liability partnerships
30 and foreign limited liability partnerships.

31 (45) Records the disclosure of which would pose a substantial likeli-
32 hood of revealing security measures that protect: (A) Systems, facilities
33 or equipment used in the production, transmission or distribution of en-
34 ergy, water or communications services; or (B) sewer or wastewater treat-
35 ment systems, facilities or equipment. For purposes of this paragraph,
36 security means measures that protect against criminal acts intended to
37 intimidate or coerce the civilian population, influence government policy
38 by intimidation or coercion or to affect the operation of government by
39 disruption of public services, mass destruction, assassination or
40 kidnapping.

41 (46) Any information or material received by the secretary of state
42 pursuant to subsection (b) of K.S.A. 2003 Supp. 44-1518, and amend-
43 ments thereto, except when such information is required to be submitted

1 in an application pursuant to K.S.A. 2003 Supp. 44-1520, and amend-
2 ments thereto.

3 (b) Except to the extent disclosure is otherwise required by law or as
4 appropriate during the course of an administrative proceeding or on ap-
5 peal from agency action, a public agency or officer shall not disclose fi-
6 nancial information of a taxpayer which may be required or requested by
7 a county appraiser or the director of property valuation to assist in the
8 determination of the value of the taxpayer's property for ad valorem tax-
9 ation purposes; or any financial information of a personal nature required
10 or requested by a public agency or officer, including a name, job descrip-
11 tion or title revealing the salary or other compensation of officers, em-
12 ployees or applicants for employment with a firm, corporation or agency,
13 except a public agency. Nothing contained herein shall be construed to
14 prohibit the publication of statistics, so classified as to prevent identifi-
15 cation of particular reports or returns and the items thereof.

16 (c) As used in this section, the term "cited or identified" shall not
17 include a request to an employee of a public agency that a document be
18 prepared.

19 (d) If a public record contains material which is not subject to dis-
20 closure pursuant to this act, the public agency shall separate or delete
21 such material and make available to the requester that material in the
22 public record which is subject to disclosure pursuant to this act. If a public
23 record is not subject to disclosure because it pertains to an identifiable
24 individual, the public agency shall delete the identifying portions of the
25 record and make available to the requester any remaining portions which
26 are subject to disclosure pursuant to this act, unless the request is for a
27 record pertaining to a specific individual or to such a limited group of
28 individuals that the individuals' identities are reasonably ascertainable, the
29 public agency shall not be required to disclose those portions of the record
30 which pertain to such individual or individuals.

31 (e) The provisions of this section shall not be construed to exempt
32 from public disclosure statistical information not descriptive of any iden-
33 tifiable person.

34 (f) Notwithstanding the provisions of subsection (a), any public rec-
35 ord which has been in existence more than 70 years shall be open for
36 inspection by any person unless disclosure of the record is specifically
37 prohibited or restricted by federal law, state statute or rule of the Kansas
38 supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and
39 amendments thereto.

40 Sec. 7. K.S.A. 45-217 and K.S.A. 2003 Supp. 45-221 are hereby
41 repealed.

42 Sec. 8. This act shall take effect and be in force from and after its
43 publication in the statute book.