

HOUSE BILL No. 2425

By Representative Kuether

2-9

9 AN ACT concerning victims of crimes; relating to the identification
10 thereof; amending K.S.A. 38-1608 and K.S.A. 2004 Supp. 22-3201 and
11 45-221 and repealing the existing sections; also repealing K.S.A. 2004
12 Supp. 45-221g and 45-221h.
13

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

15 Section 1. K.S.A. 2004 Supp. 22-3201 is hereby amended to read as
16 follows: 22-3201. (a) Prosecutions in the district court shall be upon com-
17 plaint, indictment or information.

18 (b) The complaint, information or indictment shall be a plain and
19 concise written statement of the essential facts constituting the crime
20 charged, which complaint, information or indictment, drawn in the lan-
21 guage of the statute, shall be deemed sufficient. The precise time of the
22 commission of an offense need not be stated in the indictment or infor-
23 mation; but it is sufficient if shown to have been within the statute of
24 limitations, except where the time is an indispensable ingredient in the
25 offense. An indictment shall be signed by the presiding juror of the grand
26 jury. An information shall be signed by the county attorney, the attorney
27 general or any legally appointed assistant or deputy of either. A complaint
28 shall be signed by some person with knowledge of the facts. Allegations
29 made in one count may be incorporated by reference in another count.
30 The complaint, information or indictment shall state for each count the
31 official or customary citation of the statute, rule and regulation or other
32 provision of law which the defendant is alleged to have violated. Error in
33 the citation or its omission shall be not ground for dismissal of the com-
34 plaint, information or indictment or for reversal of a conviction if the
35 error or omission did not prejudice the defendant.

36 (c) When relevant, the complaint, information or indictment shall
37 also allege facts sufficient to constitute a crime or specific crime subca-
38 tegory in the crime seriousness scale.

39 (d) The court may strike surplusage from the complaint, information
40 or indictment.

41 (e) The court may permit a complaint or information to be amended
42 at any time before verdict or finding if no additional or different crime is
43 charged and if substantial rights of the defendant are not prejudiced.

1 (f) When a complaint, information or indictment charges a crime but
2 fails to specify the particulars of the crime sufficiently to enable the de-
3 fendant to prepare a defense the court may, on written motion of the
4 defendant, require the prosecuting attorney to furnish the defendant with
5 a bill of particulars. At the trial the state's evidence shall be confined to
6 the particulars of the bill.

7 (g) Except as otherwise provided, the prosecuting attorney shall en-
8 dorse the names of all witnesses known to the prosecuting attorney upon
9 the complaint, information and indictment at the time of filing it. Except
10 as otherwise provided, the prosecuting attorney may endorse on it the
11 names of other witnesses that may afterward become known to the pros-
12 ecuting attorney, at times that the court may by rule or otherwise pre-
13 scribe. If any witness is to testify and the prosecuting attorney believes
14 the witness who has provided information is in danger of intimidation or
15 retaliation, the prosecuting attorney may delay identifying such informant
16 witness until such informant witness actually testifies but in no event shall
17 identification of a witness be delayed beyond arraignment without further
18 order of the court after hearing and an opportunity of the defendant to
19 be heard.

20 (h) *When a complaint, information or indictment contains allegations*
21 *wherein the victim or victims are under 18 years of age, such victims shall*
22 *be identified only by initials and dates of birth. The names of such victims*
23 *shall not be made available without written order of the court, except that*
24 *such names shall be made available to the defendant and defendant's*
25 *counsel for the sole use of preparing and presenting a defense.*

26 Sec. 2. K.S.A. 38-1608 is hereby amended to read as follows: 38-
27 1608. (a) All records of law enforcement officers and agencies and mu-
28 nicipal courts concerning a public offense committed or alleged to have
29 been committed by a juvenile under 14 years of age shall be kept readily
30 distinguishable from criminal and other records and shall not be disclosed
31 to anyone except:

32 (1) The judge and members of the court staff designated by the judge
33 of a court having the juvenile before it in any proceedings;

34 (2) parties to the proceedings and their attorneys;

35 (3) the department of social and rehabilitation services;

36 (4) any individual, or any officer of a public or private agency or in-
37 stitution, having custody of the juvenile under court order or providing
38 educational, medical or mental health services to the juvenile or a court-
39 approved advocate for the juvenile;

40 (5) any educational institution to the extent necessary to enable the
41 educational institution to provide the safest possible environment for its
42 pupils and employees;

43 (6) any educator to the extent necessary to enable the educator to

- 1 protect the personal safety of the educator and the educator's pupils;
2 (7) law enforcement officers or county or district attorneys or their
3 staff when necessary for the discharge of their official duties;
4 (8) the central repository, as defined by K.S.A. 22-4701 and amend-
5 ments thereto, for use only as a part of the juvenile offender information
6 system established under K.S.A. 38-1618 and amendments thereto;
7 (9) juvenile intake and assessment workers;
8 (10) juvenile justice authority;
9 (11) any other person when authorized by a court order, subject to
10 any conditions imposed by the order; and
11 (12) as provided in subsection (c).
12 (b) The provisions of this section shall not apply to records
13 concerning:
14 (1) A violation, by a person 14 or more years of age, of any provision
15 of chapter 8 of the Kansas Statutes Annotated or of any city ordinance or
16 county resolution which relates to the regulation of traffic on the roads,
17 highways or streets or the operation of self-propelled or nonself-propelled
18 vehicles of any kind;
19 (2) a violation, by a person 16 or more years of age, of any provision
20 of chapter 32 of the Kansas Statutes Annotated; or
21 (3) an offense for which the juvenile is prosecuted as an adult.
22 (c) All records of law enforcement officers and agencies and munic-
23 ipal courts concerning a public offense committed or alleged to have been
24 committed by a juvenile 14 or more years of age shall be subject to the
25 same disclosure restrictions as the records of adults. Information identi-
26 fying victims and alleged victims of sex offenses, as defined in K.S.A.
27 chapter 21, article 35, *and amendments thereto, or identifying any victim*
28 *under 18 years of age* shall not be disclosed or open to public inspection
29 under any circumstances. Nothing in this section shall prohibit the victim
30 or any alleged victim of any sex offense from voluntarily disclosing such
31 victim's identity.
32 (d) Relevant information, reports and records shall be made available
33 to the department of corrections upon request and a showing that the
34 former juvenile has been convicted of a crime and placed in the custody
35 of the secretary of the department of corrections.
36 (e) All records, reports and information obtained as a part of the
37 juvenile intake and assessment process for juvenile offenders shall be
38 confidential and shall not be disclosed except as provided in this section
39 or by rules and regulations established by the commissioner of juvenile
40 justice.
41 (1) Any court of record may order the disclosure of such records,
42 reports and other information to any person or entity.
43 (2) The head of any juvenile intake and assessment program, certified

- 1 pursuant to the commissioner of juvenile justice, may authorize disclosure
2 of such records, reports and other information to:
- 3 (A) A person licensed to practice the healing arts who has before that
4 person a child whom the person reasonably suspects may be abused or
5 neglected;
 - 6 (B) a court-appointed special advocate for a child, which advocate
7 reports to the court, or an agency having the legal responsibility or au-
8 thorization to care for, treat or supervise a child;
 - 9 (C) a parent or other person responsible for the welfare of a child,
10 or such person's legal representative, with protection for the identity of
11 persons reporting and other appropriate persons;
 - 12 (D) the child or the guardian ad litem for such child;
 - 13 (E) the police or other law enforcement agency;
 - 14 (F) an agency charged with the responsibility of preventing or treat-
15 ing physical, mental or emotional abuse or neglect or sexual abuse of
16 children, if the agency requesting the information has standards of con-
17 fidentiality as strict or stricter than the requirements of the Kansas code
18 for care of children or the Kansas juvenile justice code, whichever is
19 applicable;
 - 20 (G) a person who is a member of a multidisciplinary team;
 - 21 (H) an agency authorized by a properly constituted authority to di-
22 agnose, care for, treat or supervise a child who is the subject of a report
23 or record of child abuse or neglect;
 - 24 (I) any individual, or public or private agency authorized by a properly
25 constituted authority to diagnose, care for, treat or supervise a child who
26 is the subject of a report or record of child abuse or neglect and specif-
27 ically includes the following: Physicians, psychiatrists, nurses, nurse prac-
28 titioners, psychologists, licensed social workers, child development spe-
29 cialists, physicians' assistants, community mental health workers, alcohol
30 and drug abuse counselors and licensed or registered child care providers;
 - 31 (J) a citizen review board;
 - 32 (K) an educational institution if related to a juvenile offender that
33 attends such educational institution; and
 - 34 (L) educators who have exposure to the juvenile offender or who are
35 responsible for pupils who have exposure to the juvenile offender.
- 36 (3) To any juvenile intake and assessment worker of another certified
37 juvenile intake and assessment program.
- 38 Sec. 3. K.S.A. 2004 Supp. 45-221 is hereby amended to read as fol-
39 lows: 45-221. (a) Except to the extent disclosure is otherwise required by
40 law, a public agency shall not be required to disclose:
- 41 (1) Records the disclosure of which is specifically prohibited or re-
42 stricted by federal law, state statute or rule of the Kansas supreme court
43 or the disclosure of which is prohibited or restricted pursuant to specific

- 1 authorization of federal law, state statute or rule of the Kansas supreme
2 court to restrict or prohibit disclosure.
- 3 (2) Records which are privileged under the rules of evidence, unless
4 the holder of the privilege consents to the disclosure.
- 5 (3) Medical, psychiatric, psychological or alcoholism or drug depend-
6 ency treatment records which pertain to identifiable patients.
- 7 (4) Personnel records, performance ratings or individually identifi-
8 ble records pertaining to employees or applicants for employment, except
9 that this exemption shall not apply to the names, positions, salaries and
10 lengths of service of officers and employees of public agencies once they
11 are employed as such.
- 12 (5) Information which would reveal the identity of any undercover
13 agent or any informant reporting a specific violation of law.
- 14 (6) Letters of reference or recommendation pertaining to the char-
15 acter or qualifications of an identifiable individual, *except documents re-*
16 *lating to the appointment of persons to fill a vacancy in an elected office.*
- 17 (7) Library, archive and museum materials contributed by private
18 persons, to the extent of any limitations imposed as conditions of the
19 contribution.
- 20 (8) Information which would reveal the identity of an individual who
21 lawfully makes a donation to a public agency, if anonymity of the donor
22 is a condition of the donation, *except if the donation is intended for or*
23 *restricted to providing remuneration or personal tangible benefit to a*
24 *named public officer or employee.*
- 25 (9) Testing and examination materials, before the test or examination
26 is given or if it is to be given again, or records of individual test or ex-
27 amination scores, other than records which show only passage or failure
28 and not specific scores.
- 29 (10) Criminal investigation records, ~~except that~~ *as provided herein.*
30 The district court, in an action brought pursuant to K.S.A. 45-222, and
31 amendments thereto, may order disclosure of such records, subject to
32 such conditions as the court may impose, if the court finds that disclosure:
33 (A) Is in the public interest;
34 (B) would not interfere with any prospective law enforcement action,
35 *criminal investigation or prosecution;*
36 (C) would not reveal the identity of any confidential source or un-
37 dercover agent;
38 (D) would not reveal confidential investigative techniques or proce-
39 dures not known to the general public;
40 (E) would not endanger the life or physical safety of any person; and
41 (F) would not reveal the name, address, phone number or any other
42 information which specifically and individually identifies the victim of any
43 sexual offense in article 35 of chapter 21 of the Kansas Statutes Anno-

1 tated, and amendments thereto, *or identifies any victim under 18 years*
2 *of age.*

3 *If a public record is discretionarily closed by a public agency pursuant*
4 *to this subsection, the record custodian, upon request, shall provide a*
5 *written citation to the specific provisions of paragraphs (A) through (F)*
6 *that necessitate closure of that public record.*

7 (11) Records of agencies involved in administrative adjudication or
8 civil litigation, compiled in the process of detecting or investigating vio-
9 lations of civil law or administrative rules and regulations, if disclosure
10 would interfere with a prospective administrative adjudication or civil
11 litigation or reveal the identity of a confidential source or undercover
12 agent.

13 (12) Records of emergency or security information or procedures of
14 a public agency, or plans, drawings, specifications or related information
15 for any building or facility which is used for purposes requiring security
16 measures in or around the building or facility or which is used for the
17 generation or transmission of power, water, fuels or communications, if
18 disclosure would jeopardize security of the public agency, building or
19 facility.

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

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

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

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

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

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

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

42 (18) Plans, designs, drawings or specifications which are prepared by
43 a person other than an employee of a public agency or records which are

1 the property of a private person.

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

7 (20) Notes, preliminary drafts, research data in the process of anal-
8 ysis, unfunded grant proposals, memoranda, recommendations or other
9 records in which opinions are expressed or policies or actions are pro-
10 posed, except that this exemption shall not apply when such records are
11 publicly cited or identified in an open meeting or in an agenda of an open
12 meeting.

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

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

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

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

24 (A) Publicly cited or identified in an open meeting or in an agenda
25 of an open meeting; or

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

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

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

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

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

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

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

43 (29) Correctional records pertaining to an identifiable inmate or re-

1 lease, except that:

2 (A) The name; photograph and other identifying information; sen-
3 tence data; parole eligibility date; custody or supervision level; disciplinary
4 record; supervision violations; conditions of supervision, excluding
5 requirements pertaining to mental health or substance abuse counseling;
6 location of facility where incarcerated or location of parole office main-
7 taining supervision and address of a releasee whose crime was committed
8 after the effective date of this act shall be subject to disclosure to any
9 person other than another inmate or releasee, except that the disclosure
10 of the location of an inmate transferred to another state pursuant to the
11 interstate corrections compact shall be at the discretion of the secretary
12 of corrections;

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

17 (C) the information provided to the law enforcement agency pursu-
18 ant to the sex offender registration act, K.S.A. 22-4901, *et seq.*, and
19 amendments thereto, shall be subject to disclosure to any person, except
20 that the name, address, telephone number or any other information which
21 specifically and individually identifies the victim of any offender required
22 to register as provided by the Kansas offender registration act, K.S.A. 22-
23 4901 *et seq.* and amendments thereto, shall not be disclosed; and

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

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

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

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

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

43 (34) Records involved in the obtaining and processing of intellectual

1 property rights that are expected to be, wholly or partially vested in or
2 owned by a state educational institution, as defined in K.S.A. 76-711, and
3 amendments thereto, or an assignee of the institution organized and ex-
4 isting for the benefit of the institution.

5 (35) Any report or record which is made pursuant to K.S.A. 65-4922,
6 65-4923 or 65-4924, and amendments thereto, and which is privileged
7 pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

8 (36) Information which would reveal the precise location of an ar-
9 cheological site.

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

13 ~~(38) Risk-based capital reports, risk-based capital plans and corrective~~
14 ~~orders including the working papers and the results of any analysis filed~~
15 ~~with the commissioner of insurance in accordance with K.S.A. 40-2e20~~
16 ~~and 40-2d20 and amendments thereto.~~

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

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

22 ~~(41)~~ (38) All financial analysis ratios and examination synopses con-
23 cerning insurance companies that are submitted to the commissioner by
24 the national association of insurance commissioners' insurance regulatory
25 information system.

26 ~~(42)~~ (39) Any records the disclosure of which is restricted or prohib-
27 ited by a tribal-state gaming compact.

28 ~~(43)~~ (40) Market research, market plans, business plans and the terms
29 and conditions of managed care or other third party contracts, developed
30 or entered into by the university of Kansas medical center in the operation
31 and management of the university hospital which the chancellor of the
32 university of Kansas or the chancellor's designee determines would give
33 an unfair advantage to competitors of the university of Kansas medical
34 center.

35 ~~(44)~~ (41) The amount of franchise tax paid to the secretary of revenue
36 or the secretary of state by domestic corporations, foreign corporations,
37 domestic limited liability companies, foreign limited liability companies,
38 domestic limited partnership, foreign limited partnership, domestic lim-
39 ited liability partnerships and foreign limited liability partnerships.

40 ~~(45)~~ (42) Records, *other than criminal investigation records*, the dis-
41 closure of which would pose a substantial likelihood of revealing security
42 measures that protect: (A) Systems, facilities or equipment used in the
43 production, transmission or distribution of energy, water or communi-

1 cations services; ~~or~~ (B) *transportation and sewer or wastewater treatment*
2 *systems, facilities or equipment; or (C) private property or persons, if the*
3 *records are submitted to the agency for the purposes of this paragraph.*
4 For purposes of this paragraph, security means measures that protect
5 against criminal acts intended to intimidate or coerce the civilian popu-
6 lation, influence government policy by intimidation or coercion or to af-
7 fect the operation of government by disruption of public services, mass
8 destruction, assassination or kidnapping. *Security measures include, but*
9 *are not limited to, intelligence information, tactical plans, resource de-*
10 *ployment and vulnerability assessments.*

11 ~~(46) Any information or material received by the secretary of state~~
12 ~~pursuant to subsection (b) of K.S.A. 2004 Supp. 44-1518, and amend-~~
13 ~~ments thereto, except when such information is required to be submitted~~
14 ~~in an application pursuant to K.S.A. 2004 Supp. 44-1520, and amend-~~
15 ~~ments thereto.~~

16 (43) *Any information or material received by the register of deeds of*
17 *a county from military discharge papers (DD Form 214) except that such*
18 *papers shall be disclosed: To the military dischargee; to such dischargee's*
19 *immediate family members and lineal descendants; to such dischargee's*
20 *heirs, agents or assigns; to the licensed funeral director who has custody*
21 *of the body of the deceased dischargee; when required by a department*
22 *or agency of the federal or state government or a political subdivision*
23 *thereof; when the form is required to perfect the claim of military service*
24 *or honorable discharge or a claim of a dependent of the dischargee; and*
25 *upon the written approval of the commissioner of veterans affairs, to a*
26 *person conducting research.*

27 (44) *Information that would reveal the location of a shelter or a sa-*
28 *fehouse or similar place where persons are provided protection from*
29 *abuse.*

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

43 (c) As used in this section, the term "cited or identified" shall not

1 include a request to an employee of a public agency that a document be
2 prepared.

3 (d) If a public record contains material which is not subject to dis-
4 closure pursuant to this act, the public agency shall separate or delete
5 such material and make available to the requester that material in the
6 public record which is subject to disclosure pursuant to this act. If a public
7 record is not subject to disclosure because it pertains to an identifiable
8 individual, the public agency shall delete the identifying portions of the
9 record and make available to the requester any remaining portions which
10 are subject to disclosure pursuant to this act, unless the request is for a
11 record pertaining to a specific individual or to such a limited group of
12 individuals that the individuals' identities are reasonably ascertainable, the
13 public agency shall not be required to disclose those portions of the record
14 which pertain to such individual or individuals.

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

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

24 Sec. 4. K.S.A. 38-1608 and K.S.A. 2004 Supp. 22-3201, 45-221, 45-
25 221g and 45-221h are hereby repealed.

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