

HOUSE BILL No. 2301

By Committee on Judiciary

2-7

1 AN ACT concerning **public records; relating to trial jurors**; legislative
2 review of exceptions to disclosure of public records; amending **K.S.A.**
3 **22-3408 and** K.S.A. 2016 Supp. 45-229 and 75-7d08 and repealing the
4 existing sections; also repealing K.S.A. 2016 Supp. 45-229c.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 **Section 1. K.S.A. 22-3408 is hereby amended to read as follows: 22-**
8 **3408. (1) (a) When drawn, a list of prospective jurors and their addresses**
9 **shall be filed in the office of the clerk of the court and.**

10 (b) *The list filed pursuant to paragraph (a) shall not be a public*
11 **record.** *The provisions of this paragraph shall expire on July 1, 2022,*
12 *unless the legislature reviews and reenacts such provisions pursuant to*
13 *K.S.A. 45-229, and amendments thereto, prior to July 1, 2022.*

14 (2) (a) **The qualifications of jurors and grounds for exemption from**
15 **jury service in civil cases shall be applicable in criminal trials, except as**
16 **otherwise provided by law.**

17 (b) **An exemption from service on a jury is not a basis for**
18 **challenge, but is the privilege of the person exempted.**

19 (3) **The prosecuting attorney and the defendant or his the**
20 **defendant's attorney shall conduct the examination of prospective jurors.**
21 **The court may conduct an additional examination. The court may limit**
22 **the examination by the defendant, his the defendant's attorney or the**
23 **prosecuting attorney if the court believes such examination to be**
24 **harassment, is causing unnecessary delay or serves no useful purpose.**

25 ~~Section 1.~~ **Sec. 2.** K.S.A. 2016 Supp. 45-229 is hereby amended to
26 read as follows: 45-229. (a) It is the intent of the legislature that
27 exceptions to disclosure under the open records act shall be created or
28 maintained only if:

29 (1) The public record is of a sensitive or personal nature concerning
30 individuals;

31 (2) the public record is necessary for the effective and efficient
32 administration of a governmental program; or

33 (3) the public record affects confidential information.

34 The maintenance or creation of an exception to disclosure must be
35 compelled as measured by these criteria. Further, the legislature finds that
36 the public has a right to have access to public records unless the criteria in

1 this section for restricting such access to a public record are met and the
2 criteria are considered during legislative review in connection with the
3 particular exception to disclosure to be significant enough to override the
4 strong public policy of open government. To strengthen the policy of open
5 government, the legislature shall consider the criteria in this section before
6 enacting an exception to disclosure.

7 (b) Subject to the provisions of subsections (g) and (h), any new
8 exception to disclosure or substantial amendment of an existing exception
9 shall expire on July 1 of the fifth year after enactment of the new
10 exception or substantial amendment, unless the legislature acts to continue
11 the exception. A law that enacts a new exception or substantially amends
12 an existing exception shall state that the exception expires at the end of
13 five years and that the exception shall be reviewed by the legislature
14 before the scheduled date.

15 (c) For purposes of this section, an exception is substantially
16 amended if the amendment expands the scope of the exception to include
17 more records or information. An exception is not substantially amended if
18 the amendment narrows the scope of the exception.

19 (d) This section is not intended to repeal an exception that has been
20 amended following legislative review before the scheduled repeal of the
21 exception if the exception is not substantially amended as a result of the
22 review.

23 (e) In the year before the expiration of an exception, the revisor of
24 statutes shall certify to the president of the senate and the speaker of the
25 house of representatives, by July 15, the language and statutory citation of
26 each exception ~~which~~ that will expire in the following year which meets
27 the criteria of an exception as defined in this section. Any exception that is
28 not identified and certified to the president of the senate and the speaker of
29 the house of representatives is not subject to legislative review and shall
30 not expire. If the revisor of statutes fails to certify an exception that the
31 revisor subsequently determines should have been certified, the revisor
32 shall include the exception in the following year's certification after that
33 determination.

34 (f) "Exception" means any provision of law ~~which~~ that creates an
35 exception to disclosure or limits disclosure under the open records act
36 pursuant to K.S.A. 45-221, and amendments thereto, or pursuant to any
37 other provision of law.

38 (g) A provision of law ~~which~~ that creates or amends an exception to
39 disclosure under the open records law shall not be subject to review and
40 expiration under this act if such provision:

- 41 (1) Is required by federal law;
- 42 (2) applies solely to the legislature or to the state court system;
- 43 (3) has been reviewed and continued in existence twice by the

1 legislature; or

2 (4) has been reviewed and continued in existence by the legislature
3 during the 2013 legislative session and thereafter.

4 (h) (1) The legislature shall review the exception before its scheduled
5 expiration and consider as part of the review process the following:

6 (A) What specific records are affected by the exception;

7 (B) whom does the exception uniquely affect, as opposed to the
8 general public;

9 (C) what is the identifiable public purpose or goal of the exception;

10 (D) whether the information contained in the records may be obtained
11 readily by alternative means and how it may be obtained;

12 (2) an exception may be created or maintained only if it serves an
13 identifiable public purpose and may be no broader than is necessary to
14 meet the public purpose it serves. An identifiable public purpose is served
15 if the legislature finds that the purpose is sufficiently compelling to
16 override the strong public policy of open government and cannot be
17 accomplished without the exception and if the exception:

18 (A) Allows the effective and efficient administration of a
19 governmental program, which administration would be significantly
20 impaired without the exception;

21 (B) protects information of a sensitive personal nature concerning
22 individuals, the release of which information would be defamatory to such
23 individuals or cause unwarranted damage to the good name or reputation
24 of such individuals or would jeopardize the safety of such individuals.
25 Only information that would identify the individuals may be excepted
26 under this paragraph; or

27 (C) protects information of a confidential nature concerning entities,
28 including, but not limited to, a formula, pattern, device, combination of
29 devices, or compilation of information which is used to protect or further a
30 business advantage over those who do not know or use it, the disclosure of
31 which information would injure the affected entity in the marketplace.

32 (3) Records made before the date of the expiration of an exception
33 shall be subject to disclosure as otherwise provided by law. In deciding
34 whether the records shall be made public, the legislature shall consider
35 whether the damage or loss to persons or entities uniquely affected by the
36 exception of the type specified in paragraph (2)(B) or (2)(C) ~~of this~~
37 ~~subsection (h)~~ would occur if the records were made public.

38 (i) (1) Exceptions contained in the following statutes as continued in
39 existence in section 2 of chapter 126 of the 2005 Session Laws of Kansas
40 and ~~which~~ *that* have been reviewed and continued in existence twice by
41 the legislature as provided in subsection (g) are hereby continued in
42 existence: 1-401, 2-1202, 5-512, 9-1137, 9-1712, 9-2217, 10-630, 11-306,
43 12-189, 12-1,108, 12-1694, 12-1698, 12-2819, 12-4516, 16-715, 16a-2-

1 304, 17-1312e, 17-2227, 17-5832, 17-7511, 17-7514, 17-76,139, 19-4321,
2 21-2511, 22-3711, 22-4707, 22-4909, 22a-243, 22a-244, 23-605, 23-9,312,
3 25-4161, 25-4165, 31-405, 34-251, 38-2212, 39-709b, 39-719e, 39-934,
4 39-1434, 39-1704, 40-222, 40-2,156, 40-2c20, 40-2c21, 40-2d20, 40-2d21,
5 40-409, 40-956, 40-1128, 40-2807, 40-3012, 40-3304, 40-3308, 40-3403b,
6 40-3421, 40-3613, 40-3805, 40-4205, 44-510j, 44-550b, 44-594, 44-635,
7 44-714, 44-817, 44-1005, 44-1019, 45-221(a)(1) through (43), 46-256, 46-
8 259, 46-2201, 47-839, 47-844, 47-849, 47-1709, 48-1614, 49-406, 49-427,
9 55-1,102, 58-4114, 59-2135, 59-2802, 59-2979, 59-29b79, 60-3333, 60-
10 3336, 65-102b, 65-118, 65-119, 65-153f, 65-170g, 65-177, 65-1,106, 65-
11 1,113, 65-1,116, 65-1,157a, 65-1,163, 65-1,165, 65-1,168, 65-1,169, 65-
12 1,171, 65-1,172, 65-436, 65-445, 65-507, 65-525, 65-531, 65-657, 65-
13 1135, 65-1467, 65-1627, 65-1831, 65-2422d, 65-2438, 65-2836, 65-2839a,
14 65-2898a, 65-3015, 65-3447, 65-34,108, 65-34,126, 65-4019, 65-4922,
15 65-4925, 65-5602, 65-5603, 65-6002, 65-6003, 65-6004, 65-6010, 65-
16 67a05, 65-6803, 65-6804, 66-101c, 66-117, 66-151, 66-1,190, 66-1,203,
17 66-1220a, 66-2010, 72-996, 72-4311, 72-4452, 72-5214, 72-53,106, 72-
18 5427, 72-8903, 73-1228, 74-2424, 74-2433f, 74-4905, 74-4909, 74-
19 50,131, 74-5515, 74-7308, 74-7338, 74-8104, 74-8307, 74-8705, 74-8804,
20 74-9805, 75-104, 75-712, 75-7b15, 75-1267, 75-2943, 75-4332, 75-4362,
21 75-5133, 75-5266, 75-5665, 75-5666, 75-7310, 76-355, 76-359, 76-493,
22 76-12b11, 76-3305, 79-1119, 79-1437f, 79-3234, 79-3395, 79-3420, 79-
23 3499, 79-34,113, 79-3614, 79-3657, 79-4301 and 79-5206.

24 (2) Exceptions contained in the following statutes as certified by the
25 revisor of statutes to the president of the senate and the speaker of the
26 house of representatives pursuant to subsection (e) and ~~which that~~ have been reviewed during the 2015 legislative session and continued in
27 existence by the legislature as provided in subsection (g) are hereby
28 continued in existence: 17-2036, 40-5301, 45-221(a)(45), (46) and (49),
29 48-16a10, 58-4616, 60-3351, 72-972a, 74-50,217, ~~74-99d05~~ and 75-
30 53,105.
31

32 (j) (1) Exceptions contained in the following statutes as continued in
33 existence in section 1 of chapter 87 of the 2006 Session Laws of Kansas
34 and ~~which that~~ have been reviewed and continued in existence twice by
35 the legislature as provided in subsection (g) are hereby continued in
36 existence: 1-501, 9-1303, 12-4516a, 39-970, 65-525, 65-5117, 65-6016,
37 65-6017 and 74-7508.

38 (2) Exceptions contained in the following statutes as certified by the
39 revisor of statutes to the president of the senate and the speaker of the
40 house of representatives pursuant to subsection (e) during 2015 and ~~which that~~
41 ~~that~~ have been reviewed during the 2016 legislative session are hereby
42 continued in existence ~~until July 1, 2021, at which time such exceptions~~
43 ~~shall expire~~: 12-5611, 22-4906, 22-4909, 38-2310, 38-2311, 38-2326, 40-

1 955, 44-1132, 45-221(a)(10)(F) and (a)(50), 60-3333, 65-4a05, 65-445(g),
2 65-6154, 71-218, 75-457, 75-712c, 75-723 and 75-7c06.

3 (k) Exceptions contained in the following statutes as certified by the
4 revisor of statutes to the president of the senate and the speaker of the
5 house of representatives pursuant to subsection (e) and ~~which that~~ have
6 been reviewed during the 2014 legislative session and continued in
7 existence by the legislature as provided in subsection (g) are hereby
8 continued in existence: 1-205, 2-2204, 8-240, 8-247, 8-255c, 8-1324, 8-
9 1325, 12-17,150, 12-2001, 17-12a607, 38-1008, 38-2209, 40-5006, 40-
10 5108, 41-2905, 41-2906, 44-706, 44-1518, 45-221(a)(44), (45), (46), (47)
11 and (48), 50-6a11, 56-1a610, 56a-1204, 65-1,243, 65-16,104, 65-3239, 74-
12 50,184, 74-8134, 74-99b06, 77-503a and 82a-2210.

13 (l) Exceptions contained in the following statutes as certified by the
14 revisor of statutes to the president of the senate and the speaker of the
15 house of representatives pursuant to subsection (e) during ~~2011~~ 2016 and
16 *that have been reviewed during the 2017 legislative session* are hereby
17 continued in existence ~~until July 1, 2017, at which time such exceptions~~
18 ~~shall expire: 12-5711, 21-2511, 38-2313, 65-516, 74-8745, 74-8752, 74-~~
19 ~~8772 and 75-7427: 9-153e, 12-5711, 21-2511, 22-4909, 38-2313, 45-~~
20 ~~221(a)(51) and (52), 65-516, 65-1505, 74-2012, 74-5607, 74-8745, 74-~~
21 ~~8752, 74-8772, 75-7d01, 75-7d05, 75-5133, 75-7427 and 79-3234.~~

22 (m) Exceptions contained in the following statutes as certified by the
23 revisor of statutes to the president of the senate and the speaker of the
24 house of representatives pursuant to subsection (e) during 2012 and ~~which~~
25 *that* have been reviewed during the 2013 legislative session and continued
26 in existence by the legislature as provided in subsection (g) are hereby
27 continued in existence: 12-5811, 40-222, 40-223j, 40-5007a, 40-5009a,
28 40-5012a, 65-1685, 65-1695, 65-2838a, 66-1251, 66-1805, 72-60c01, 75-
29 712 and 75-5366.

30 ~~Sec. 2.~~ 3. K.S.A. 2016 Supp. 75-7d08 is hereby amended to read as
31 follows: 75-7d08. (a) Each certified batterer intervention program and
32 each holder of a temporary permit issued pursuant to the batterer
33 intervention program certification act shall keep and maintain for a period
34 of two years; each book, document, paper, record or other information
35 pertaining to services rendered as a certified batterer intervention program.

36 (b) Regardless of the form or media in which such books, documents,
37 paper, record or other source of information is kept, each book, document,
38 paper, record and other source of information concerning the compliance
39 with the requirements established in the batterer intervention program
40 certification act and the rules and regulations adopted thereunder by each
41 certified batterer intervention program or holder of a temporary permit
42 shall be inspected at least once every certification period by the attorney
43 general. The attorney general may order other or additional inspections as

1 deemed necessary by the attorney general. The attorney general shall at all
2 times be given free access to all such books, documents, papers, records or
3 other sources of information concerning the compliance with the
4 requirements established in the batterer intervention program certification
5 act and the rules and regulations adopted thereunder.

6 (c)-(1) Any information or copy thereof obtained by the attorney
7 general pursuant to this section or pursuant to an investigation pursuant to
8 the batterer intervention program certification act shall not be public and
9 shall not be subject to disclosure pursuant to the Kansas open records act,
10 and amendments thereto.

11 ~~(2) The provisions of subsection (c)(1) shall expire on July 1, 2017,~~
12 ~~unless the legislature acts to reenact such provision. The provisions of~~
13 ~~subsection (c)(1) shall be reviewed by the legislature prior to July 1, 2017.~~

14 ~~Sec. 3. 4. **K.S.A. 22-3408** and K.S.A. 2016 Supp. 45-229, 45-229c~~
15 ~~and 75-7d08 are hereby repealed.~~

16 ~~Sec. 4. 5. This act shall take effect and be in force from and after its~~
17 ~~publication in the statute book.~~