

House Substitute for Substitute for SENATE BILL No. 18

By Committee on Judiciary

2-9

1 AN ACT concerning law enforcement; relating to audio and video
2 recordings using a body camera or a vehicle camera; criminal
3 investigation records exception under open records act; amending
4 K.S.A. 2015 Supp. 45-217 and repealing the existing section.

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

7 New Section 1. (a) Every audio or video recording made and retained
8 by law enforcement using a body camera or a vehicle camera shall be
9 considered a criminal investigation record as defined in K.S.A. 45-217,
10 and amendments thereto. The provisions of this subsection shall expire on
11 July 1, 2021, unless the legislature reviews and reenacts this provision
12 pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2021.

13 (b) In addition to any disclosure authorized pursuant to the open
14 records act, K.S.A. 45-215 et seq., and amendments thereto, a person
15 described in subsection (c) may request to listen to an audio recording or
16 to view a video recording made by a body camera or a vehicle camera. The
17 law enforcement agency shall allow the person to listen to the requested
18 audio recording or to view the requested video recording, and may charge
19 a reasonable fee for such services provided by the law enforcement
20 agency.

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

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

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

25 (3) an attorney for a person described in subsection (c)(1) or (c)(2).

26 (d) As used in this section:

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

29 (2) "Vehicle camera" means a device that is attached to a law
30 enforcement vehicle that electronically records audio or video of law
31 enforcement officers' activities.

32 Sec. 2. K.S.A. 2015 Supp. 45-217 is hereby amended to read as
33 follows: 45-217. As used in the open records act, unless the context
34 otherwise requires:

35 (a) "Business day" means any day other than a Saturday, Sunday or
36 day designated as a holiday by the congress of the United States, by the

1 legislature or governor of this state or by the respective political
2 subdivision of this state.

3 (b) "Clearly unwarranted invasion of personal privacy" means
4 revealing information that would be highly offensive to a reasonable
5 person, including information that may pose a risk to a person or property
6 and is not of legitimate concern to the public.

7 (c) "Criminal investigation records" means: (1) *Every audio or video*
8 *recording made and retained by law enforcement using a body camera or*
9 *a vehicle camera as defined in section 1, and amendments thereto; and (2)*
10 records of an investigatory agency or criminal justice agency as defined by
11 K.S.A. 22-4701, and amendments thereto, compiled in the process of
12 preventing, detecting or investigating violations of criminal law, but does
13 not include police blotter entries, court records, rosters of inmates of jails
14 or other correctional or detention facilities or records pertaining to
15 violations of any traffic law other than vehicular homicide as defined by
16 K.S.A. 21-3405, prior to its repeal, or K.S.A. 2015 Supp. 21-5406, and
17 amendments thereto.

18 (d) "Custodian" means the official custodian or any person designated
19 by the official custodian to carry out the duties of custodian of this act.

20 (e) "Official custodian" means any officer or employee of a public
21 agency who is responsible for the maintenance of public records,
22 regardless of whether such records are in the officer's or employee's actual
23 personal custody and control.

24 (f) (1) "Public agency" means the state or any political or taxing
25 subdivision of the state or any office, officer, agency or instrumentality
26 thereof, or any other entity receiving or expending and supported in whole
27 or in part by the public funds appropriated by the state or by public funds
28 of any political or taxing subdivision of the state.

29 (2) "Public agency" shall not include:

30 (A) Any entity solely by reason of payment from public funds for
31 property, goods or services of such entity;

32 (B) any municipal judge, judge of the district court, judge of the court
33 of appeals or justice of the supreme court; or

34 (C) any officer or employee of the state or political or taxing
35 subdivision of the state if the state or political or taxing subdivision does
36 not provide the officer or employee with an office which is open to the
37 public at least 35 hours a week.

38 (g) (1) "Public record" means any recorded information, regardless of
39 form or characteristics, which is made, maintained or kept by or is in the
40 possession of any public agency including, but not limited to, an
41 agreement in settlement of litigation involving the Kansas public
42 employees retirement system and the investment of moneys of the fund.

43 (2) "Public record" shall not include records which are owned by a

1 private person or entity and are not related to functions, activities,
2 programs or operations funded by public funds or records which are made,
3 maintained or kept by an individual who is a member of the legislature or
4 of the governing body of any political or taxing subdivision of the state.

5 (3) "Public record" shall not include records of employers related to
6 the employer's individually identifiable contributions made on behalf of
7 employees for workers compensation, social security, unemployment
8 insurance or retirement. The provisions of this subsection shall not apply
9 to records of employers of lump-sum payments for contributions as
10 described in this subsection paid for any group, division or section of an
11 agency.

12 (h) "Undercover agent" means an employee of a public agency
13 responsible for criminal law enforcement who is engaged in the detection
14 or investigation of violations of criminal law in a capacity where such
15 employee's identity or employment by the public agency is secret.

16 Sec. 3. K.S.A. 2015 Supp. 45-217 is hereby repealed.

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