

1 AN ACT relating to victim privacy.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 17.150 is amended to read as follows:

4 (1) ***For the purposes of this section:***

5 ***(a) "Personally identifiable information" means information which can be***  
6 ***used to distinguish or trace an individual's identity, including but not***  
7 ***limited to the individual's name, Social Security number, address, or phone***  
8 ***number; and***

9 ***(b) "Victim" means a victim of any of the following:***

- 10 ***1. Domestic violence and abuse as defined in KRS 403.720;***
- 11 ***2. Dating violence and abuse as defined in KRS 456.010;***
- 12 ***3. Criminal abuse in the first degree under KRS 508.100;***
- 13 ***4. Criminal abuse in the second degree under KRS 508.110;***
- 14 ***5. Criminal abuse in the third degree under KRS 508.120;***
- 15 ***6. Stalking in the first degree under KRS 508.140;***
- 16 ***7. Stalking in the second degree under KRS 508.150;***
- 17 ***8. Any offense under KRS Chapter 510;***
- 18 ***9. Escape in the first degree under KRS 520.020;***
- 19 ***10. Human trafficking under KRS 529.100;***
- 20 ***11. Promoting human trafficking under KRS 529.110;***
- 21 ***12. Unlawful transaction with a minor in the first degree under KRS***  
22 ***530.064 subsection (1)(a);***
- 23 ***13. Use of a minor in a sexual performance under KRS 531.310;***
- 24 ***14. Promoting a sexual performance by a minor under KRS 531.320; or***
- 25 ***15. Any similar state or federal offense.***

26 ***(2)*** Every sheriff, chief of police, coroner, jailer, prosecuting attorney, probation officer,  
27 parole officer; warden or superintendent of a prison, reformatory, correctional

1 school, mental hospital, or institution for the intellectually disabled; Department of  
2 Kentucky State Police; state fire marshal; Board of Alcoholic Beverage Control;  
3 Cabinet for Health and Family Services; Transportation Cabinet; Department of  
4 Corrections; Department of Juvenile Justice; and every other person or criminal  
5 justice agency, except the Court of Justice and the Department for Public Advocacy,  
6 public or private, dealing with crimes or criminals or with delinquency or  
7 delinquents, when requested by the cabinet, shall:

- 8 (a) Install and maintain records needed for reporting data required by the cabinet;
- 9 (b) Report to the cabinet as and when the cabinet requests all data demanded by it,  
10 except that the reports concerning a juvenile delinquent shall not reveal the  
11 juvenile's or the juvenile's parents' identity;
- 12 (c) Give the cabinet or its accredited agent access for purpose of inspection; and
- 13 (d) Cooperate with the cabinet to the end that its duties may be properly  
14 performed.

15 ~~(3)~~~~(2)~~ Intelligence and investigative reports maintained by criminal justice agencies  
16 are subject to public inspection if prosecution is completed or a determination not to  
17 prosecute has been made. However, portions of the records may be withheld from  
18 inspection if the inspection would disclose:

- 19 (a) The name or identity of any confidential informant or information which may  
20 lead to the identity of any confidential informant;
- 21 (b) Information of a personal nature, the disclosure of which will not tend to  
22 advance a wholesome public interest or a legitimate private interest;
- 23 (c) Information which may endanger the life or physical safety of law  
24 enforcement personnel; or
- 25 (d) Information contained in the records to be used in a prospective law  
26 enforcement action.

27 **(4) Prior to public inspection of intelligence and investigative reports, all personally**

1        **identifiable information of a victim shall be redacted.**

2        ~~(5)~~~~(3)~~     When a demand for the inspection of the records is refused by the custodian of  
3        the record, the burden shall be upon the custodian to justify the refusal of inspection  
4        with specificity. Exemptions provided by this section shall not be used by the  
5        custodian of the records to delay or impede the exercise of rights granted by this  
6        section.

7        ~~(6)~~~~(4)~~     Centralized criminal history records are not subject to public inspection.  
8        Centralized history records mean information on individuals collected and compiled  
9        by the Justice and Public Safety Cabinet from criminal justice agencies and  
10       maintained in a central location consisting of identifiable descriptions and notations  
11       of arrests, detentions, indictments, information, or other formal criminal charges  
12       and any disposition arising therefrom, including sentencing, correctional  
13       supervision, and release. The information shall be restricted to that recorded as the  
14       result of the initiation of criminal proceedings or any proceeding related thereto.  
15       Nothing in this subsection shall apply to documents maintained by criminal justice  
16       agencies which are the source of information collected by the Justice and Public  
17       Safety Cabinet. Criminal justice agencies shall retain the documents and no official  
18       thereof shall willfully conceal or destroy any record with intent to violate the  
19       provisions of this section.

20       ~~(7)~~~~(5)~~     The provisions of KRS Chapter 61 dealing with administrative and judicial  
21       remedies for inspection of public records and penalties for violations thereof shall  
22       be applicable to this section.

23       ~~(8)~~~~(6)~~     The secretary of justice and public safety shall adopt the administrative  
24       regulations necessary to carry out the provisions of the criminal history record  
25       information system and to insure the accuracy of the information based upon  
26       recommendations submitted by the commissioner, Department of Kentucky State  
27       Police.

1 ~~(9)~~(7) The Administrative Office of the Courts may, upon suitable agreement  
2 between the Chief Justice and the secretary of justice and public safety, supply  
3 criminal justice information and data to the cabinet. No information, other than that  
4 required by KRS 27A.350 to 27A.420 and 27A.440, shall be solicited from a circuit  
5 clerk, justice or judge, court, or agency of the Court of Justice unless the solicitation  
6 or request for information is made pursuant to an agreement which may have been  
7 reached between the Chief Justice and the secretary of justice and public safety.

8 ➔Section 2. KRS 61.878 is amended to read as follows:

9 (1) The following public records are excluded from the application of KRS 61.870 to  
10 61.884 and shall be subject to inspection only upon order of a court of competent  
11 jurisdiction, except that no court shall authorize the inspection by any party of any  
12 materials pertaining to civil litigation beyond that which is provided by the Rules of  
13 Civil Procedure governing pretrial discovery:

14 (a) Public records containing information of a personal nature where the public  
15 disclosure thereof would constitute a clearly unwarranted invasion of personal  
16 privacy;

17 (b) Records confidentially disclosed to an agency and compiled and maintained  
18 for scientific research. This exemption shall not, however, apply to records the  
19 disclosure or publication of which is directed by another statute;

20 (c) 1. Upon and after July 15, 1992, records confidentially disclosed to an  
21 agency or required by an agency to be disclosed to it, generally  
22 recognized as confidential or proprietary, which if openly disclosed  
23 would permit an unfair commercial advantage to competitors of the  
24 entity that disclosed the records;

25 2. Upon and after July 15, 1992, records confidentially disclosed to an  
26 agency or required by an agency to be disclosed to it, generally  
27 recognized as confidential or proprietary, which are compiled and

- 1 maintained:
- 2 a. In conjunction with an application for or the administration of a
- 3 loan or grant;
- 4 b. In conjunction with an application for or the administration of
- 5 assessments, incentives, inducements, and tax credits as described
- 6 in KRS Chapter 154;
- 7 c. In conjunction with the regulation of commercial enterprise,
- 8 including mineral exploration records, unpatented, secret
- 9 commercially valuable plans, appliances, formulae, or processes,
- 10 which are used for the making, preparing, compounding, treating,
- 11 or processing of articles or materials which are trade commodities
- 12 obtained from a person; or
- 13 d. For the grant or review of a license to do business.
- 14 3. The exemptions provided for in subparagraphs 1. and 2. of this
- 15 paragraph shall not apply to records the disclosure or publication of
- 16 which is directed by another statute;
- 17 (d) Public records pertaining to a prospective location of a business or industry
- 18 where no previous public disclosure has been made of the business' or
- 19 industry's interest in locating in, relocating within or expanding within the
- 20 Commonwealth. This exemption shall not include those records pertaining to
- 21 application to agencies for permits or licenses necessary to do business or to
- 22 expand business operations within the state, except as provided in paragraph
- 23 (c) of this subsection;
- 24 (e) Public records which are developed by an agency in conjunction with the
- 25 regulation or supervision of financial institutions, including but not limited to,
- 26 banks, savings and loan associations, and credit unions, which disclose the
- 27 agency's internal examining or audit criteria and related analytical methods;

- 1 (f) The contents of real estate appraisals, engineering or feasibility estimates and  
2 evaluations made by or for a public agency relative to acquisition of property,  
3 until such time as all of the property has been acquired. The law of eminent  
4 domain shall not be affected by this provision;
- 5 (g) Test questions, scoring keys, and other examination data used to administer a  
6 licensing examination, examination for employment, or academic examination  
7 before the exam is given or if it is to be given again;
- 8 (h) Records of law enforcement agencies or agencies involved in administrative  
9 adjudication that were compiled in the process of detecting and investigating  
10 statutory or regulatory violations if the disclosure of the information would  
11 harm the agency by revealing the identity of informants not otherwise known  
12 or by premature release of information to be used in a prospective law  
13 enforcement action or administrative adjudication. Unless exempted by other  
14 provisions of KRS 61.870 to 61.884, public records exempted under this  
15 provision shall be open after enforcement action is completed or a decision is  
16 made to take no action; however, records or information compiled and  
17 maintained by county attorneys or Commonwealth's attorneys pertaining to  
18 criminal investigations or criminal litigation shall be exempted from the  
19 provisions of KRS 61.870 to 61.884 and shall remain exempted after  
20 enforcement action, including litigation, is completed or a decision is made to  
21 take no action. The exemptions provided by this subsection shall not be used  
22 by the custodian of the records to delay or impede the exercise of rights  
23 granted by KRS 61.870 to 61.884;
- 24 (i) Preliminary drafts, notes, correspondence with private individuals, other than  
25 correspondence which is intended to give notice of final action of a public  
26 agency;
- 27 (j) Preliminary recommendations, and preliminary memoranda in which opinions

- 1           are expressed or policies formulated or recommended;
- 2       (k) All public records or information the disclosure of which is prohibited by
- 3           federal law or regulation;
- 4       (l) Public records or information the disclosure of which is prohibited or
- 5           restricted or otherwise made confidential by enactment of the General
- 6           Assembly;
- 7       (m) 1. Public records the disclosure of which would have a reasonable
- 8           likelihood of threatening the public safety by exposing a vulnerability in
- 9           preventing, protecting against, mitigating, or responding to a terrorist act
- 10          and limited to:
- 11           a. Criticality lists resulting from consequence assessments;
- 12           b. Vulnerability assessments;
- 13           c. Antiterrorism protective measures and plans;
- 14           d. Counterterrorism measures and plans;
- 15           e. Security and response needs assessments;
- 16           f. Infrastructure records that expose a vulnerability referred to in this
- 17           subparagraph through the disclosure of the location, configuration,
- 18           or security of critical systems, including public utility critical
- 19           systems. These critical systems shall include but not be limited to
- 20           information technology, communication, electrical, fire
- 21           suppression, ventilation, water, wastewater, sewage, and gas
- 22           systems;
- 23           g. The following records when their disclosure will expose a
- 24           vulnerability referred to in this subparagraph: detailed drawings,
- 25           schematics, maps, or specifications of structural elements, floor
- 26           plans, and operating, utility, or security systems of any building or
- 27           facility owned, occupied, leased, or maintained by a public agency;

1 and

2 h. Records when their disclosure will expose a vulnerability referred  
3 to in this subparagraph and that describe the exact physical  
4 location of hazardous chemical, radiological, or biological  
5 materials.

6 2. As used in this paragraph, "terrorist act" means a criminal act intended  
7 to:

8 a. Intimidate or coerce a public agency or all or part of the civilian  
9 population;

10 b. Disrupt a system identified in subparagraph 1.f. of this paragraph;  
11 or

12 c. Cause massive destruction to a building or facility owned,  
13 occupied, leased, or maintained by a public agency.

14 3. On the same day that a public agency denies a request to inspect a public  
15 record for a reason identified in this paragraph, that public agency shall  
16 forward a copy of the written denial of the request, referred to in KRS  
17 61.880(1), to the executive director of the Kentucky Office of Homeland  
18 Security and the Attorney General.

19 4. Nothing in this paragraph shall affect the obligations of a public agency  
20 with respect to disclosure and availability of public records under state  
21 environmental, health, and safety programs.

22 5. The exemption established in this paragraph shall not apply when a  
23 member of the Kentucky General Assembly seeks to inspect a public  
24 record identified in this paragraph under the Open Records Law;

25 **(n) 1. Portions of records containing personally identifiable information of a**  
26 **victim.**

27 **2. Upon a court order directing the release of records containing**



1                   personally identifiable information of a victim, the personally  
2                   identifiable information shall be redacted.

3                   3. As used in this paragraph, "personally identifiable information" and  
4                   "victim" have the same meanings as in Section 1 of this Act; and

5                   ~~(o)~~~~(n)~~ Public or private records, including books, papers, maps, photographs,  
6                   cards, tapes, discs, diskettes, recordings, software, or other documentation  
7                   regardless of physical form or characteristics, having historic, literary, artistic,  
8                   or commemorative value accepted by the archivist of a public university,  
9                   museum, or government depository from a donor or depositor other than a  
10                  public agency. This exemption shall apply to the extent that nondisclosure is  
11                  requested in writing by the donor or depositor of such records, but shall not  
12                  apply to records the disclosure or publication of which is mandated by another  
13                  statute or by federal law.

14                  (2) No exemption in this section shall be construed to prohibit disclosure of statistical  
15                  information not descriptive of any readily identifiable person.

16                  (3) No exemption in this section shall be construed to deny, abridge, or impede the  
17                  right of a public agency employee, including university employees, an applicant for  
18                  employment, or an eligible on a register to inspect and to copy any record including  
19                  preliminary and other supporting documentation that relates to him. The records  
20                  shall include, but not be limited to, work plans, job performance, demotions,  
21                  evaluations, promotions, compensation, classification, reallocation, transfers, lay-  
22                  offs, disciplinary actions, examination scores, and preliminary and other supporting  
23                  documentation. A public agency employee, including university employees,  
24                  applicant, or eligible shall not have the right to inspect or to copy any examination  
25                  or any documents relating to ongoing criminal or administrative investigations by  
26                  an agency.

27                  (4) If any public record contains material which is not excepted under this section, the

1 public agency shall separate the excepted and make the nonexcepted material  
2 available for examination.

3 (5) The provisions of this section shall in no way prohibit or limit the exchange of  
4 public records or the sharing of information between public agencies when the  
5 exchange is serving a legitimate governmental need or is necessary in the  
6 performance of a legitimate government function.

7 ➔Section 3. KRS 61.884 is amended to read as follows:

8 (1) Any person shall have access to any public record relating to him or *her* in which he  
9 *or she* is mentioned by name, upon presentation of appropriate identification,  
10 subject to the provisions of KRS 61.878.

11 (2) *Notwithstanding subsection (1) of this section, prior to any public record being*  
12 *accessed, personally identifiable information as defined in Section 1 of this Act,*  
13 *about a victim as defined in Section 1 of this Act shall be redacted, unless the*  
14 *person seeking access provides identification establishing his or her identity as*  
15 *the victim mentioned in the record.*