



▶ ▶ **Know
Your
Rights:**

*A Guide for Survivors
of Sexual Violence
in Kansas*



2021



**Kansas
Coalition**
against sexual &
domestic violence
www.kcsdv.org



Know Your Rights: **A Guide for Survivors of Sexual Violence in Kansas**

Developed by:



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►► About this Guide

Sexual violence can be devastating and can affect every part of your life. If you are a survivor of sexual violence, you may feel confused or overwhelmed. It can be helpful to remember that you have rights. This guide provides basic information about your rights. It also discusses options that may be available to you. You are in control of the decision to use these rights or pursue these remedies. **This guide is not intended to provide legal advice or replace advocacy services.**

Sexual violence occurs in all parts of life. It occurs in marriages, dating relationships, families, workplaces, schools, and in many other settings. Sexual violence includes rape, human trafficking, unwanted sexual touching, sexual harassment, unwanted sexual comments, and many other forms of sexual violence. Survivors of sexual assault include people of all ages, races, classes, genders, abilities, and sexual orientations.

In the United States, about 1 in 3 women and 1 in 6 men have experienced sexual violence at some point in their lives. 1 in 5 women and 1 in 71 men are raped in their lifetime.

If you need legal advice, you should contact an attorney. Information about contacting an attorney is on **page 12**.

If you need advocacy services, a list of Kansas Sexual and Domestic Violence Programs is available on the Kansas Coalition Against Sexual and Domestic Violence website at www.kcsdv.org or you can call the Kansas Crisis Hotline at 1-888-END ABUSE (1-888-363-2287) anytime for more information.

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►► Advocacy Services

A Sexual and Domestic Violence Program can provide you with help and support. These advocacy programs operate across the state of Kansas. These programs offer services 24 hours per day, 7 days a week. Program services can include a crisis hotline number; safety planning; information and referrals; criminal justice advocacy; civil court advocacy; hospital advocacy; and emotional support. Advocates can assist with transportation, requesting crime victims' compensation, obtaining protection orders, and more.

Advocacy services are **free and confidential**. Any information you share with an advocate from a Sexual and Domestic Violence Program is private. Advocacy programs cannot share your information with anyone outside the organization, unless:

1. They are required to disclose the information by law. For example, an advocate may disclose certain information to follow mandatory reporting laws, as discussed on **page 10**; or
2. You choose to sign a release that allows them to disclose information. Before you sign anything, your advocate should discuss all the situations that may happen if you sign a release. The release should be in writing and time limited.

Sexual and Domestic Violence Program advocates are a great resource to support you during your contact with the legal system. Advocates can provide support and information during the legal process. Advocates can go with you to court hearings, emergency rooms, and police stations.

For more information about advocacy services and Sexual and Domestic Violence Programs, you can contact the Kansas Coalition Against Sexual and Domestic Violence at 785-232-9784 or by visiting our website www.kcsdv.org. You can also call the Kansas Crisis Hotline at 1-888-END ABUSE (1-888-363-2287) for information about the Kansas Sexual and Domestic Violence Programs nearest you.

►► Safety

Your personal safety is important. A sexual and domestic violence advocate can discuss your safety with you and help you create a plan to respond to dangerous situations. Part of these safety plans may include using laws designed to protect your safety, such as getting a protection order or enrolling in the Address Confidentiality Program. These legal protections are only part of a larger safety plan. While this guide will discuss legal protections, your safety may also include emotional and psychological considerations that an advocate can help you find resources to address. Your emotional safety is as important as any legal protection.

► Protection Orders

A protection order (often referred to as a “no-contact order” or “restraining order”) is a court order intended to protect victims of abuse, sexual assault, and stalking. Under Kansas law, survivors of sexual assault can seek a protection order known as a Protection from Stalking, Sexual Assault, or Human Trafficking (PFSSAHT) order. Sometimes, survivors of sexual assault may also qualify for a Protection from Abuse order (PFA), if they have a relationship or a prior relationship with the perpetrator. An attorney or an advocate can assist you in filing for a protection order, or you can file on your own. Protection orders can be filed in person at your county court or online using the Protection Order Portal at www.kspop.org. The Protection Order Portal is only available in English at this time.

If you are thinking about filing for a protection order on your own, consider talking with an advocate first. An advocate can discuss how filing for a protection order may affect your safety and privacy. You may also want to review the Protection Order Guided Interview found by clicking on the link on this webpage: <https://www.kcsdv.org/learn-more/resources/brochures/criminal-justice/po-guided-interview/>.

Protection from Stalking, Sexual Assault, or Human Trafficking (PFSSAHT)

A PFSSAHT is a court order that bans the perpetrator from following, harassing, or contacting you. The court can also order other things to ensure your safety. You can request that the court will not share your address and telephone number with the perpetrator or the public. If the perpetrator already knows where you live or work, you can ask the court to order the perpetrator to stay away from your home or your job.

You can apply for an order to protect you based on the sexual assault. You must prove the person sexually assaulted you. Unlike a criminal case, you only have to show that the sexual assault most likely occurred. This is because different types of legal cases need different amounts of evidence. In civil cases, such as a protection order, you only have to present enough evidence for the court to find that it was “more likely than not” to have happened. The legal definition of sexual assault used by the court is “a nonconsensual sexual act; or an attempted sexual act against another by force, threat of force, pressure or when the person is unable to give consent.” The law only requires proof of one sexual assault incident to qualify for the order. You do not need to have a prior or existing relationship with the person you are restraining.

You can apply for an order to protect you based on your status as a survivor of human trafficking. You must show that you have been a victim of human trafficking by a preponderance of the evidence (more likely than not that, the human trafficking occurred). Kansas has a broad definition of Human Trafficking. It includes, but is not limited to, the recruitment, unlawful holding, or transportation of a person for labor or services, by force, fraud, or pressure from another person to subject the person to involuntary servitude or forced labor; or commercial sexual exploitation of a child. If you think you might qualify but have further questions, a Sexual and Domestic Violence Program advocate can assist you.

Protection from Abuse Order (PFA)

If you have a relationship or prior relationship with your perpetrator, you may qualify for a PFA. A PFA is a civil court order that prohibits the perpetrator from abusing you. It is different from a no-contact order issued in a criminal case. Prohibited abuse includes sexual abuse and sexual violence. The order will likely direct the perpetrator to have “no contact” with you. The court also has the power to order other things to help keep you safe. For example, the court may order that your address or telephone number remain confidential. They can also order a cell phone company to allow you to transfer your phone line to a new account. PFAs also permit the court to make temporary orders about custody of shared children.

To qualify for a PFA, you must have one of the following relationships with the perpetrator: you are living together; you have lived together in the past; you are the parent of or living with a child who the perpetrator harmed; you have a child together; you are dating; or you have dated in the past.. If you and the perpetrator are not intimate partners or household members, you will not qualify for a PFA. You can still pursue a PFSSAHT.

You must also prove that the perpetrator has done at least one of the following: purposely tried to harm you or a child physically, this can include sexual assault or sexual violence; purposely or carelessly caused you or a child physical harm; purposely caused you or a child to fear that physical harm is about to happen; or participated in certain sexual behaviors with a child under 16 years of age who is not the perpetrator’s spouse.

The Protection Order Guided Interview found by clicking on the link on this webpage: <https://www.kcsdv.org/learn-more/resources/brochures/criminal-justice/po-guided-interview/> can give you more information about PFA or PFSSAHT orders, or you can contact an advocate or an attorney to help you.

► Separating Cell Phone Accounts

If you share a cell phone plan with your perpetrator, Kansas law protects your right to separate your account from the perpetrator’s

account. When requesting a Protection from Abuse or Protection from Stalking, Sexual Assault, or Human Tracking order, you can request an additional order that requires phone companies to separate phone lines on a shared account. All phone carriers are required by law to help you move your line to a new account, without your partner's permission. They are not allowed to provide your new contact information to the perpetrator. Additionally, they are not allowed to charge you a fee for this service. You will be responsible for the bill going forward.

► **Housing Protections for Survivors**

As a survivor of sexual assault, you qualify for protections related to your housing. Under both Federal and State law, you cannot be denied the opportunity to live somewhere or rent property because of the circumstances surrounding your sexual assault.

Your landlord cannot evict you from your home or find you to be in violation of a lease as a result of the circumstances of your sexual assault.

Kansas law says that if you must leave a rental property early for safety reasons resulting from your sexual assault, you cannot be responsible for rent for the period after vacating the rented property. You must give your landlord notice. Your landlord can request documentation verifying your status as a survivor. This can come from a victim advocate, an attorney, or a doctor or therapist.

A landlord can charge a reasonable termination fee. This fee cannot exceed one month's rent. The fee must be in the terms of the rental agreement or lease.

► **Safe at Home Program (*Address Confidentiality Program*)**

As a survivor of sexual or domestic violence, you are eligible to enroll in the Safe at Home program. The goal of the Safe at Home program is to prevent the perpetrator from discovering your current address. This program provides a substitute address and free mail forwarding service for survivors of sexual violence, domestic violence, trafficking,

and stalking. This address is a post office box number that you can use for your driver's license, voter registration, and school enrollment.

You must work with an enrolling agent to apply for the Safe at Home program. Many Sexual and Domestic Violence Programs are enrolling agents and have advocates who can help you with the application. The advocates can discuss the benefits and limitations of this program. For additional information, visit the website at <https://www.ag.ks.gov/safe-at-home>, email safeathome@ag.ks.gov, or call (785) 291-3950.

▶▶ Medical Care

▶ Sexual Assault Medical Forensic Exam

A sexual assault medical forensic examination is an exam performed by a physician, a specially trained nurse, or a specially trained physician's assistant. Some hospitals or emergency departments have a certified Sexual Assault Nurse Examiner (SANE) or Sexual Assault Forensic Examiner (SAFE) who will perform the exam. A Sexual and Domestic Violence Program advocate may be available to support you during the medical forensic exam. The medical professional will address your health care concerns, provide any necessary medical treatment, and collect samples and other evidence related to the sexual assault from your body and clothing. Although not required, it is recommended that prior to the exam you do not bathe, shower, or do anything that may remove evidence from your body or clothing in order to keep evidence from being damaged.

The sexual assault medical forensic exam is conducted by using a sexual assault evidence collection kit (SAECK). The cost of the forensic portion of the exam conducted using this kit is free to you. The county where the assault occurred is responsible for the costs of the forensic exam. Health care providers may take steps to protect your privacy and identity when billing the county for the exam, although there is no guarantee. If you have concerns about this process, you should discuss them with the health care provider or the Sexual and Domestic Violence Program advocate.

It is important to know that you may be responsible for health care costs such as medication or treatment for injuries that are not covered under the sexual assault medical forensic examination process. In certain circumstances, you may be eligible for crime victims' compensation to help recover those medical costs and other expenses. See **page 17** for more information.

You do not have to report the sexual assault to law enforcement to get a sexual assault medical forensic exam. The hospital should not contact law enforcement without your written permission and consent. However, health care providers are still required to comply with mandatory reporting requirements. This means that health care providers must report child abuse, abuse of vulnerable adults, and certain serious wounds regardless of whether you give consent or not. See **page 10** for more information on mandatory reporting.

If you decide to report the sexual assault to law enforcement, the health care provider will give the sexual assault evidence collection kit to law enforcement. If you are not reporting to law enforcement, the sexual assault evidence collection kit will be sealed and marked with a unique number to protect your identity and privacy and sent to the KBI for storage. The KBI will store the evidence for five years. This gives you some time to decide whether you want to report the sexual assault to law enforcement while preserving the evidence collected. The KBI will not know your name. The evidence will not be analyzed by any crime lab unless you file a report with law enforcement, and they request that it be processed.

You do not have to undergo the sexual assault medical forensic examination alone. With your consent, a Sexual and Domestic Violence Program advocate can be present during the examination to provide you support throughout the process. The health care provider should offer advocate services to you or you can request that a Sexual and Domestic Violence Program advocate be present.

A list of Kansas hospitals or emergency departments that have a SANE or SAFE can be found at this website: <https://www.kcsdv.org/find-help/in-kansas/sane/>. However, any emergency department must provide emergency medical services or treatment.

Survivors of sexual assault often worry about sexually transmitted infections (STIs), pregnancy, and other health concerns. You should speak with a health care provider about these concerns as soon as possible after the assault.

You can ask for information about medications that will help prevent STIs. Your health care provider can give you a combination of medicines to help prevent the onset of many STIs, including HIV. These are most effective when started within 72 hours of exposure. You may want to ask your health care provider about this option.

You can also ask your health care provider about emergency contraception. This is a medication designed to prevent pregnancy after intercourse. You may have heard emergency contraception referred to as the “morning-after pill.” This medication does not require a prescription and can be taken up to five days after intercourse. It is most effective when taken within 72 hours. Not all pharmacies and hospitals carry this medication and it may not work for everyone. For more information about emergency contraception, contact your health care provider or your local Sexual and Domestic Violence Program.

►► Privacy

Protecting your privacy may be a major concern for you. There are different legal resources designed to protect your privacy. However, there are times when advocates might share your information. The primary exceptions to most privacy protections are mandatory reporting laws. If you have specific concerns about your privacy, you should contact an attorney or a Sexual and Domestic Violence Program for more information.

► Privacy in the Legal System

If you choose to participate in the legal system, it is likely that information you provide to legal officials, such as law enforcement, prosecutors, judges, and other court officials, will be put into the public record and made available to people who ask to view it. However, the court can decide to keep public records private (seal the

record) or remove private information in legal cases where protecting your privacy outweighs the public's interest. You may consider asking the court to seal any legal documents related to the sexual assault or remove your name and identifying information. The court decides whether to keep this information private. An attorney can help you with this process.

There are other laws designed to protect your privacy. Kansas has a "rape shield law" that, in most circumstances, prevents information about your prior sexual conduct from being shared as evidence in a sex crimes case.

You should also be aware that the information other people provide to the court also becomes public record. For example, the perpetrator of the sexual assault may provide information about you to the court. The perpetrator is the person that commits the sexual assault. The perpetrator may try to access your mental health or health care records and introduce them into evidence. It is important to remember that the prosecutor is not your attorney. The prosecutor works for the state and is not bound by your wish. You may want to work with a private attorney to file a motion with the court to have any of that type of information sealed or crossed out. Your own private attorney can help you with this process and in protecting your privacy interests.

► Privilege

Privilege is a legal protection made to protect your privacy. Under Kansas law, communications with your attorney, physician, spouse, and ordained minister are private and no one can make you, or the other person, reveal what you discuss. If any of these people are asked to testify in court, you can "assert your privilege" and stop them from testifying. However, there are exceptions to privilege, and you may waive your privilege without knowing. Privilege only applies to private communications. Having conversations with a person that might have privilege in a public place might create an exception to privilege because there is another person present. You should contact an attorney for more information about privilege laws in Kansas.

► Confidentiality of Advocacy Services

If you choose to use advocacy services, the Sexual and Domestic Violence Program must maintain your privacy and confidentiality at all times except in limited circumstances. Federal law requires Kansas Sexual and Domestic Violence Programs to provide free and confidential services to their clients. Advocates cannot release any information about you unless you agree. In order for an advocate to share, you have to sign a form that you understand. The form has to be written and time limited. Advocates can also release information if the law requires them to do so. If the Sexual and Domestic Violence Program cannot protect your confidentiality, such as in a case where a mandatory report is required, the program should try to notify you before sharing your information with anyone.

► Other Privacy Protections

The Health Information Portability and Accountability Act (HIPAA) protects certain medical records, but it does not provide a guarantee that your medical records are completely private.

If you are a student, federal law does not allow your school from disclosing information in your records without your written permission, but this protection also has limitations.

Many other laws have privacy protections. For more information about these laws and their limitations, you should contact an attorney or a Kansas Sexual and Domestic Violence Program advocate.

► Mandatory Reporting

Many professionals may not be able to ensure your privacy because of mandatory reporting requirements. Certain laws exist to protect special groups of people who are vulnerable. Under Kansas law, some professionals, such as health care providers, licensed social workers, licensed therapists, and others, are mandated reporters of child abuse and abuse of vulnerable adults, which may include some cases of sexual assault. Health care providers are also required to report certain kinds of physical wounds to law enforcement, such as gunshot wounds or stab wounds.

If you are under the age of 18, mandated reporters of child abuse must report when they have reason to suspect that you were harmed because of sexual abuse. These reports are made to the Department for Children and Families (DCF). When DCF receives a report, it will decide whether an investigation is needed. If it decides to investigate, DCF will notify your parents of the report and conduct an investigation. DCF must notify local law enforcement or the local prosecutor when they receive a report of sexual abuse of a child. DCF will take steps to ensure that you and your family remain safe throughout the investigation process. This could include making a safety plan with your family or placing you in a safe location if a family member is harming you.

If you are over the age of 18, then mandated reporting will only affect you if you qualify as a “certain adult.” Certain Adult is the term used in Kansas laws. In this booklet the term “vulnerable adult” will be used for the sake of clarity. A vulnerable adult is a person 18 years of age or older who is unable to protect their own interests because of a physical, emotional or mental disability that limits his or her ability to manage personal, home, or financial affairs. If you are a vulnerable adult, mandated reporters of abuse are required to report abuse to DCF, including sexual abuse or threats of harm. Most Sexual and Domestic Violence Program advocates are not mandated to report sexual assaults of vulnerable adults. However, there may be some exceptions. You should discuss mandatory reporting requirements with your sexual and domestic violence advocate prior to receiving services.

If you have received a serious injury from a weapon, health care providers may be required to report that injury to local law enforcement. This includes bullet wounds, gunshot wounds, powder burns, other injuries caused by the discharge of a firearm, and any life-threatening wound caused by a knife, ice pick, or other sharp or pointed instrument.

There may be city ordinances (rules) locally that require other injuries to be reported to law enforcement.

If a state law or city ordinance (rule) does not require a mandatory report, you should be able to access services without fear of law

enforcement or DCF being notified. If you are concerned, you should discuss this with the service provider before sharing any information. You should ask them what privacy protections they have in place and let them know that you do not want your information to be shared.

►► **Contacting an Attorney**

It can be helpful for you to have your own private attorney. An attorney can help you understand your rights. They can help you identify and use the legal tools available to you. They can help guide you through the criminal justice system.

The Kansas Lawyer Referral Service can help you decide if you need an attorney and can refer you to the type of attorney you need. The Kansas Lawyer Referral Service will keep any information you provide them private and not share it. You can contact the Kansas Lawyer Referral Service by calling 1-800-928-3111.

Kansas Legal Services (KLS) may also be able to assist you. KLS is a statewide non-profit organization that provides attorneys at no cost or reduced cost to people who meet income eligibility requirements. You can contact KLS at 1-800-723-6953 or www.kansaslegalservices.org.

If there is a criminal case, the prosecutor is not “your attorney.” They represent the state of Kansas, not you. While this prosecutor may be helpful to you, the prosecutor’s duty is to prosecute the crime on behalf of the state. This is also true for the prosecutor’s victim-witness coordinator. Thus, in some cases, it may be helpful to access and secure a private attorney to better ensure your rights are protected.

An advocate cannot provide legal advice. However, they can provide support and helpful information about your rights and available resources. They can also support you through the criminal justice system process, which can be hard to understand. Your local Kansas Sexual and Domestic Violence Program may also be able to refer you to an attorney if needed. For a list of Sexual and Domestic Violence Programs, you can contact the Kansas Coalition Against Sexual and Domestic Violence at 785-232-9784 or by visiting our website www.kcsdv.org.

►► Technology

► Breach of Privacy

Not all sexual violence is physical. Safety includes the security of your technology. If you are the victim of non-consensual Intimate imagery, commonly known as revenge porn, Kansas laws can protect you. It is a crime in the state of Kansas for someone to share any of your intimate (private) images with another person without your knowledge or consent. It is also a crime for anyone to threaten to share your personal images in exchange for some sort of payment, whether it is financial or in the form of sexual acts.

► Keeping your Social Media Safe

Social media (Facebook, Twitter, Instagram, etc.) creates an avenue for a victim/survivor to seek out and connect with online support systems. There is no reason why you have to avoid interacting with others online. However, some safety measures can improve your experiences online as a survivor of sexual violence. First, personalize your privacy settings. In every major social media platform, you can limit who can see your shared information. Many social media platforms automatically tag your location and publish it online along with your post. This is called a geo-tag. Turning off the tagging feature that automatically identifies your location can keep your location safe. Open communication with your support system about your preferences regarding what you want to see on social media can also be helpful. Inspirational posts can be upsetting if you are not expecting to see them or they can be healing reminders of your support system's presence. As with all issues related to interacting with others, you are in control of what and how much you choose to share. Remember to be careful about what you choose to share because statements made online can be discussed in court hearings.

If you have questions about issues surrounding technology, please contact your local Sexual and Domestic Violence Program. For a list of Sexual and Domestic Violence Programs, you can contact the Kansas Coalition Against Sexual and Domestic Violence at 785-232-9784 or by visiting our website www.kcsdv.org.

►► Employment

Many survivors of sexual violence have concerns about the impact on their job. You may need to take time off work or address safety concerns in the workplace. It may be difficult to concentrate or to get work done. There are legal protections to help with some of these concerns.

► Time Away from Work

Survivors of sexual assault often need to take time away from work. Kansas law requires employers to provide survivors of sexual assault or domestic violence with at least eight days of leave each calendar year for any of the following reasons:

- obtaining or trying to obtain a protective order or similar restrictive order for yourself or your children;
- seeking medical care for injuries resulting from sexual assault or domestic violence;
- obtaining services from a Sexual and Domestic Violence Program; or
- appearing in court proceedings related to sexual assault or domestic violence.

Your employer cannot discharge, discriminate, or retaliate against you for taking this time away from work to address these concerns.

If you wish to take this leave, you should provide your employer with advance notice. Within 48 hours after returning to work, you must provide documentation of why you needed to take this leave.

If you cannot provide your employer with advance notice, you must provide documentation of the reason for your absence within 48 hours from the time you were first absent. The following types of documentation are allowed:

- a police report indicating that you are a victim of sexual assault or domestic violence;
- a court order protecting or separating you from the perpetrator of an act of sexual assault or domestic violence, or other evidence from the court or prosecutor that you appeared in court; or

- documentation from a medical professional, sexual or domestic violence advocate, health care provider, or counselor that you received treatment for physical or mental injuries caused by sexual assault or domestic violence.

The Kansas Department of Labor, www.dol.ks.gov, is in charge of enforcing this law and can provide information on enforcement and filing a complaint.

► **Family Medical Leave Act**

You may suffer from a serious health condition because you were sexually assaulted. If that condition involves and injury, illness, or impairment that requires inpatient care or continuing treatment by a medical provider, you may be able to take up to twelve weeks of unpaid leave under the Family Medical Leave Act (FMLA).

You must meet all of the following requirements to qualify for this leave:

- your employer has at least 50 employees;
- you have worked for your employer for the past twelve months;
- you have worked at least 1,250 hours in the previous twelve months;

If you have questions or would like more information about FMLA, contact an attorney or the United States Department of Labor, Wage and Hour Division, www.dol.gov/whd/fmla/index.htm. For more information about contacting an attorney, see [page 12](#).

► **Sexual Harassment**

When sexual violence happens during work time, or when a supervisor or co-worker commits a sexual assault, the sexual assault may be considered sexual harassment. Federal law prohibits sexual harassment in the workplace. It is your employer's duty to make sure that your workplace is free from sexual harassment and other forms of sex discrimination.

If you report a sexual assault to your employer, they should take steps to address the situation. If your employer does not adequately respond or

retaliates (to get even with someone) against you for reporting the sexual assault, you may be able to sue your employer civilly under federal law.

You should speak with an attorney for more information about this type of claim. For more information about contacting an attorney, see [page 12](#). For more information, you can also contact the Kansas Human Rights Commission, www.khrc.net, the Office of Civil Rights, <https://www.state.gov/bureaus-offices/secretary-of-state/office-of-civil-rights/>, or the Equal Employment Opportunity Commission, www.eeoc.gov.

► **Workers' Compensation**

If the sexual violence occurred while you were working, you may be able to receive Workers' Compensation benefits for injuries, medical bills, and lost wages. For more information about Workers' Compensation, you should contact an attorney or the Kansas Department of Labor; www.dol.ks.gov.

► **Unemployment Insurance**

If your employment has ended because of sexual assault, you may be entitled to unemployment insurance benefits in certain circumstances. Even if you quit your job because of a sexual assault, you may still be eligible for benefits if you left for one of the following reasons:

- a health care provider advised you to do so because of illness or injury;
- working conditions were dangerous to your physical or mental well-being;
- your employer or another employee was harassing you;
- you suffered a personal emergency; or
- you, your spouse, or your child experienced domestic violence.

In order to qualify for unemployment insurance benefits, you will have to provide a variety of information to the Kansas Department of Labor. For more information, you can contact an attorney or the Kansas Department of Labor at www.getkansasbenefits.gov.

►► Financial

► Crime Victims' Compensation

In certain circumstances, the Kansas Crime Victims' Compensation Board provides financial assistance to victims of sexual assault for expenses related to the crime such as loss of earnings up to \$400 per week and out-of-pocket loss for injuries sustained as a direct result of sexual assault. The most you can receive from the Compensation Board is \$25,000. If you receive any repayment from another source, the Compensation Board will consider those when deciding how much money to give you. This includes payment from many other sources, such as:

- Restitution (payments) from the perpetrator;
- employee benefits, health insurance, workers' compensation, or other insurance; or
- public funds, such as Social Security or Cash assistance/TANF.

The expenses that Crime Victims' Compensation may cover include reasonable medical care, including medical care provided during a sexual assault examination, mental health counseling, and other services that are necessary because of the sexual assault. You may be compensated for clothing and bedding that has been taken as evidence during the sexual assault investigation. Other types of personal property losses are not typically covered.

To receive Crime Victims' Compensation, you must meet certain eligibility requirements, including:

- You must report the crime within 72 hours to the law enforcement agency in the city or county where the crime occurred unless there was a good cause for not reporting. This requirement does not apply to victims of human trafficking under the age of 18.
- You must cooperate with law enforcement throughout the criminal justice investigation and process. This requirement does not apply to victims of human trafficking under the age of 18.
- You must file a crime victims' compensation claim within two years of the incident. In cases of child sexual assault, the claim must be filed within two years from the date the crime was reported to law

enforcement. Victims of sexual assault may receive compensation for mental health counseling if they file a claim within two years of notification of the results of DNA testing or identification of a previously unknown attacker. If there is a finding of good cause, victims of sexual assault may file for mental health counseling up to 10 years from the date of the crime or within 10 years after turning 18 years of age.

- In cases other than sexual assault, your economic loss must exceed \$100 in order to qualify. Sexual assault cases are not limited by this.

For more information, contact your local Sexual and Domestic Violence Program or the Kansas Crime Victims' Compensation Board, www.ag.ks.gov/victim-services/victim-compensation.

►► Education

Sexual violence affects many students. If you are a survivor of sexual assault and a student, you may have concerns about your education that are related to the sexual assault. For example, you may have difficulties concentrating on your schoolwork or you may no longer feel safe on your campus or at your school. Your school may be able to help address some of these concerns.

Every school is required to publicize a policy against sex discrimination, which should include a process to respond to complaints of sexual assault. This policy should give you information about how your school will respond to a report of sexual assault. If your school receives federal funds, then your school is legally required to work to prevent sexual assault, investigate claims of sexual assault independently, and provide an appropriate response to sexual assault.

Your school can respond to sexual assault in a number of different ways, including providing accommodations to meet your academic needs. If you are struggling in school, you can ask your school to change your class schedule or to postpone your exams. If you are attending a college or university, you can also ask to take a temporary leave of absence.

If the perpetrator is an employee of the school or is another student, your school can limit the perpetrator's contact with you by removing

that person from your class (pending a full investigation); adjusting your schedule or transferring you to a different class. You may also consider transferring to another school. If you are in elementary, middle, or high school, your school may be required to pay for your transportation to and from the new school.

In order to receive any of these accommodations from your school, you will likely be required to disclose in a report to school authorities that you were sexually assaulted. Schools are required to investigate sexual assault independent (separate) of law enforcement or any other authority. The investigation process will be different from that used by law enforcement and the courts. However, the perpetrator will still have rights during this process to offer a defense.

Your school should work with you to protect your privacy. The perpetrator also has a right to privacy if that person is a student, and this may affect the way your school responds to the sexual assault. These privacy protections are not a guarantee. If you are under the age of 18, you should also know that teachers, school administrators, and other school employees are all mandated reporters of child abuse. See **page 10** for more information about mandatory reporting. Some colleges and universities may require faculty and staff to report suspected sexual assault regardless of a student's age.

If you attend a college or university, your school may have a school-specific disciplinary procedure to address student behavior involving sexual assault or other conduct. Each school's disciplinary procedure is different and often includes a hearing, but there are certain things every school is required to do. For example, you should be able to have a support person with you during these disciplinary proceedings if the other person is allowed a support person. This means that if the perpetrator has an attorney or support person present, you should be allowed to have an attorney or support person with you. In addition, when the school or university makes a decision about the complaint, both you and the perpetrator have the right to be informed of the outcome.

If you have additional questions about your educational rights following a sexual assault, you should contact an attorney. For more information about contacting an attorney, see **page 12**.

►► Survivors with Disabilities

Government agencies and places of public accommodation are required to make sure that you can access their facilities, services, and materials. If you are a survivor of sexual violence with a disability, you have a right to access the services, programs, and activities provided by government agencies. This includes police stations, courthouses, county health agencies, public housing agencies, and public transportation providers.

You are also entitled (allowed) to access services, products, facilities, and benefits provided by places of public accommodation. Places of public accommodation include non-profit organizations or private businesses that provide goods or services to the public. Hospitals, Sexual and Domestic Violence Programs, doctor's offices, restaurants, and hotels are all places of public accommodation. Private clubs and religious organizations are not.

These organizations must make reasonable accommodations so that services are accessible to you. If you need accommodations in order to access services, you should let the organization, agency, or business know that you need accommodations. You should not be asked to pay extra for the accommodations.

For more information about your rights related to a disability, you can contact an attorney; the Self Advocate Coalition of Kansas, www.sackonline.org; or the Disability Rights Center of Kansas, www.drckansas.org.

►► Language Access

You have the right to free language assistance if you are deaf, hard of hearing, speech impaired, or if English is not your first language and your ability to read, write, speak, or understand English is limited.

Organizations that receive federal funds are required to take steps to provide you access to their services if you have limited English proficiency or need language access. This includes law enforcement

agencies, courts, hospitals, Sexual and Domestic Violence Programs, and many other agencies.

In addition, if you are involved in a court proceeding in Kansas, you have the right to a qualified interpreter. The court is required to pay the interpreter fees. You should not be asked to pay for the interpreter's services.

If you need assistance in advocating for your right to language access and assistance, please contact the Disability Rights Center of Kansas, www.drckansas.org, or your local Sexual and Domestic Violence Program. For a list of Sexual and Domestic Violence Programs, you can contact the Kansas Coalition Against Sexual and Domestic Violence at 785-232-9784 or by visiting our website www.kcsdv.org. Or you can call the Kansas Crisis Hotline at 1-888-END-ABUSE (1-888-363-2287) any time for more information.

▶▶ Immigration

▶ Accessing Services

If you were not born in the United States, you may have some concerns about your immigration status and the impact it may have on your ability to receive services. Anyone can receive services related to emergency health and safety, regardless of their immigration status. This includes emergency medical services, law enforcement assistance, shelter, and protection orders. If someone asks about your immigration status when you seek these services, you do not have to answer. Police do not enforce immigration laws in most situations. If the police insist on asking about your immigration status, ask to speak with an attorney before answering any questions. Do not lie to the police about your immigration status. In Kansas, you have to fully and clearly invoke (ask for) your right to remain silent and not answer any further questions. Simply staying quiet will not be enough to make law enforcement stop questioning you. It is necessary to say that you will not answer any more questions without speaking to an attorney. For more information about contacting an attorney, see page 12.

If you are in the country without documentation, there are always risks associated with contacting immigration or law enforcement. If you think that you may qualify for a U Visa or a T Visa, you should contact an immigration attorney before taking any steps to apply. To request a free referral for an attorney from the Kansas Bar Association contact 1-800-928-3111 or lawyerreferralservice@ksbar.org. This service is only available to English speakers at this time.

► U Visa

If you are an immigrant survivor of sexual violence, you may be eligible for the U Visa, which is for victims of crime. The U Visa could help you get lawful status in the United States if you do not already have it.

To be eligible for a U Visa, you must:

- have been a victim of a crime that happened in the United States;
- have suffered substantial mental or physical harm because of the crime;
- have information about the crime; and
- be helpful with the investigation or prosecution of the crime.

This requires you to report the crime and work with law enforcement or prosecutors on the investigation or prosecution. *You should only consider applying for a U Visa if you believe it will be safe to do so.* The process of obtaining a U Visa can take several years.

If you qualify for a U Visa, you may request work authorization and may apply for lawful permanent residency (a green card). You may also be able to apply for a U Visa for your spouse, children, and if you are under the age of 21, your parents and minor, unmarried siblings.

► Other Immigration Options

In addition to the U Visa, you may be able to benefit from other immigration laws such as the T Visa or the VAWA self-petition.

To qualify for the T Visa, you must be a victim of human trafficking, which may include:

- being forced to work against your will;
- being abused by your employer, including sexual or physical abuse;

- being forced to work in the sex industry; or
- being under the age of 18 and in the sex industry.

The T Visa also requires that you cooperate with law enforcement or prosecutors.

To qualify for the VAWA self-petition, you must be married to, or the child of, a United States citizen or lawful permanent resident (green card holder) who has abused you or your child. This may also allow you to get permission to work legally and apply to become a lawful permanent resident.

There are other requirements and things to consider for both the T Visa and the VAWA self-petition, so it is important that you work with an immigration attorney or certified Board of Immigration Appeals representative when pursuing any of these remedies.

For more information about these remedies or assistance with locating an attorney, you should contact the Kansas Coalition Against Sexual and Domestic Violence at 785-232-9784 or by visiting our website www.kcsdv.org.

▶▶ **The Criminal Justice System**

▶ **To Report or Not to Report**

It is your decision whether to report a sexual assault to law enforcement. Remember, if you decide not to report, you can still seek advocacy services, medical care, a medical forensic exam, and other legal remedies. If you do decide to report, you do not have to go through the process alone. A friend, relative, or Sexual and Domestic Violence Program advocate can be with you to provide support.

It is important that you know what to expect from the criminal justice system. The information you provide to authorities like law enforcement, prosecutors, or victim/witness coordinators is not confidential. In fact, it may become part of a public record. Understanding the impact on you of the information you choose to share is important when working with criminal justice professionals. For more information about your privacy rights, see **page 8**.

The criminal justice system can be confusing at times, and it moves slowly. It may take many months, or even years, before your case is over. Below is a brief overview of what to expect generally. Local practices can vary. A Sexual and Domestic Violence Program advocate in your area can help you to understand the process in your community and provide you with support.

Investigation

If you report a sexual assault to law enforcement, you will be asked questions about the assault. You may be asked to have a sexual assault medical forensic exam. It is your choice whether to have the exam. See **page 6** for more information about sexual assault medical forensic exams. During the investigation, law enforcement may ask some difficult questions. The responding officer or detective may interview you many times. Kansas law prohibits law enforcement from asking you to take a polygraph exam (lie-detector test) in order to move forward with the investigation. They may interview other people who might be able to provide information and may provide witness testimony. This could include anyone who might have knowledge about the assault. After law enforcement has completed the investigation, they will send the information to the county or district attorney, also known as a prosecutor.

Prosecution

The prosecutor determines whether to move forward with filing criminal charges against the perpetrator and proceeding with a prosecution. If the prosecutor chooses not to file charges, it does not necessarily mean that they do not believe you. The prosecutor considers all the evidence as well as other factors when deciding whether to prosecute a case. Sometimes, this means the prosecutor will file charges even if you do not want this to happen. It may take a long time before you know whether the prosecutor is moving forward with the case. During this time, it is likely the perpetrator will not be in custody. It is important to have information about the court case and the proceedings. Many Kansas prosecutor offices have a victim/witness coordinator or other designated staff person who can assist

you. A Sexual and Domestic Violence Program advocate can also help support you through this process.

Remember, the prosecutor is not your attorney—she or he represents the state of Kansas, not you. It may be helpful to have your own private attorney or a Sexual and Domestic Violence Program advocate to help guide you through the criminal justice system. See **page 12** for more information about contacting an attorney.

► **Notification Requirements**

You are entitled to notification when certain events will occur or have occurred in your case. If you would like to receive these notifications, it is important to keep your contact information up to date because notification may be in the form of a letter sent to your last known address. The victim/witness coordinator, prosecutor, or Sexual and Domestic Violence Program advocate should be able to provide you with information about whom you give your contact information in order to receive a notification.

Notification of Right to be Present at Public Hearings

The law requires that the court notify you of your right to be present at any public hearing any time the defendant (perpetrator charged with a crime) has the right to appear and make a statement. This includes but is not limited to preliminary hearings, trials, sentencing hearings, sentencing modification hearings, parole public comment sessions, and Expungement (erase) hearings. If you provide your contact information to the prosecutor or municipal court clerk, they should provide you with this notification. In order to continue to receive notices, make sure to keep your contact information up to date.

Notification of Dismissal of Charges or Plea Agreements

The prosecutor must notify you before dismissing charges against the defendant and when deciding not to file charges. The prosecutor must provide you with information about any proposed plea agreements and notify you of your right to be present at a hearing where the plea agreement is reviewed or accepted. The prosecutor is responsible for

these decisions and does not need your approval. You may submit a written statement to the court before the date of the hearing. The prosecutor must have your current contact information in order to notify you of these court dates.

Notification of Motion to Depart from Presumed Sentence

In felony cases, the prosecutor is required to notify you when there is a motion to depart from the presumed sentence. This means that you should receive a notification if someone asks that the defendant be sentenced to a punishment that is less severe than what is recommended by Kansas law. If you would like to receive this notification, make sure that the prosecutor has your current contact information.

Notification of Release, Death, or Escape

If the defendant is sentenced to prison, the Kansas Department of Corrections has the responsibility to notify you prior to release on parole, conditional release, expiration of sentence, or post-release supervision, or upon death. You must file your address with the Department of Corrections Office of Victim Services in order to receive this notification and keep your information up to date. The best way to do this is by completing a Victim Notification Request. For more information, contact the Kansas Department of Corrections Office of Victim Services, www.doc.ks.gov/victim-services/office-of-victim-services.

Kansas VINE

For offenders in county custody, you can sign up to receive notification through telephone and email using the Kansas Victim Information and Notification Everyday (VINE). The VINE system allows you to use the telephone or Internet to search for information regarding the custody status of your offender and to register to receive telephone and email notification when the offender's custody status changes. It takes time for the service to become available, so a perpetrator may not show up immediately. If you have immediate concerns, contact your local county jail. VINE is a service specific to offenders in county

custody. The VINE toll-free number is 1-866-574-8463. The Attorney General's Victim Services Division is also a good resource for VINE questions. The toll-free number to reach the Victim Services Division is 1-800-828-9745.

This service is only available to those in county-level detention. If your perpetrator is in state-level detention, please contact the Kansas Department of Corrections. If you are unsure where your perpetrator is being held, the victim/witness coordinator, prosecutor, or Sexual and Domestic Violence Program advocate should be able to provide you with the information.

► **Victim Impact Statements**

You have the right to be heard by the court before the defendant is sentenced. You can make a victim impact statement at the defendant's sentencing, which you can do in writing or verbally. A court services officer may contact you for victim impact information as part of the pre-sentence investigation, which is a standard part of the sentencing process. While the Pre-Sentence Report may not be viewed by the public, your statements and psychological and substance abuse reports, if you have shared any, will be accessible to the attorney for the state, the counsel for the defendant, the sentencing judge, and the Department of Corrections if requested. Defense attorneys should not share these reports with their clients, but you should be aware that some attorneys do share this information.

► **Repayment**

As part of the defendant's sentence, the court may order the defendant to pay you for some of the losses you have suffered because of the defendant's criminal behavior. You may be asked to give them this information for the Pre-Sentence Report. After the defendant is found guilty, a request can be made to the court to hold a separate hearing to determine the amount of restitution the defendant is required to pay to you. Keep in mind that you may not receive the court-ordered restitution if the defendant is sentenced to prison time or does not have the financial means to pay it.

▶▶ **Kansas Crime Victims’ Bill of Rights**

Kansas passed the Crime Victim’s Bill of Rights, below, to empower victims and survivors in demanding their rights. These may be helpful to you if you are involved in a criminal case.

1. Victims should be treated with courtesy, compassion, and with respect for their dignity and privacy and should suffer the minimum of necessary inconvenience from their involvement with the criminal justice system.
2. Victims should receive, through formal and informal procedures, prompt and fair redress for the harm which they suffered.
3. Information regarding the availability of criminal restitution, recovery of damages in a civil cause of action, the crime victims’ compensation fund, and other remedies and the mechanisms to obtain such remedies, should be made available to victims.
4. Information should be made available to victims about their participation in criminal proceedings and the scheduling, progress, and ultimate disposition of proceedings.
5. The views and concerns of victims should be ascertained, and the appropriate assistance provided throughout the criminal process.
6. When the personal interests of victims are affected, the views or concerns of the victim should, when appropriate and consistent with criminal law and procedure, be brought to the attention of the court.
7. Measures may be taken when necessary to provide for the safety of victims and their families and to protect them from intimidation and retaliation.
8. Enhanced training should be made available to sensitize criminal justice personnel to the needs and concerns of victims and guidelines should be developed for this purpose.

9. Victims should be informed of the availability of health and social services and other relevant assistance that they might continue to receive the necessary medical, psychological and social assistance through existing programs and services.
10. Victims should report the crime and cooperate with law enforcement authorities.

►► Finding an Advocate

Information about how to find and contact advocacy services and Sexual and Domestic Violence Programs, can be found by visiting the Kansas Coalition Against Sexual and Domestic Violence's website at www.kcsdv.org. Current contact information can be found at the KCSDV website (www.kcsdv.org) allowing you to identify and access services through the updated information provided at the website. Also, KCSDV can be contacted by calling 785-232-9784. You can also call the Kansas Crisis Hotline at 1-888-END ABUSE (1-888-363-2287) for information about the Kansas Sexual and Domestic Violence Programs nearest you.

►► Conclusion

Remember, you are not alone. Sexual violence can affect your life in many different ways. There is no “right” way to act after experiencing sexual violence. Some people become very emotional and some are numb initially. This experience can be overwhelming, causing feelings of fear, anger, shame, or anxiety. Remember that your feelings and experiences are not unusual. You are not alone, and there is help available. Your advocate can help you through this process and can help you find the resources you need. For a list of Sexual and Domestic Violence Programs, you can contact the Kansas Coalition Against Sexual and Domestic Violence at 785-232-9784 or by visiting our website www.kcsdv.org and you can always reach an advocate at 1-888-END-ABUSE (1-888-363-2287).

If you think that you could benefit from any of the laws discussed in this guide, or if you have other legal needs, you should contact an attorney or your local Sexual and Domestic Violence Program for more information.

This guide may not have addressed all of your legal concerns. If you are married or have children, you may have family law concerns. Survivors of sexual violence may have housing concerns as well. You may want to pursue a civil lawsuit against the perpetrator or a third party who may be responsible. Contacting an attorney can help you learn the full extent of your legal rights as a survivor of sexual violence. You can then make your own informed choices about how to respond and how to begin your healing.

►► References

The laws and resources referred to in each of these sections are listed below.

A Guide for Survivors of Sexual Assault in Kansas Smith, S.G., Zhang, X., Basile, K.C., Merrick, M.T., Wang, J., Kresnow, M., Chen, J. (2018). The National Intimate Partner and Sexual Violence Survey (NISVS): 2015 Data Brief – Updated Release. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.

Advocacy Services 34 U.S.C. § 12291(b)(2)

Privacy 20 U.S.C. § 1232g; 34 U.S.C. § 12291(b)(2); K.S.A. 21-5502; K.S.A. 21-6319; K.S.A. 38-2223; K.S.A. 39-1430; K.S.A. 39-1431; K.S.A. 45-221(a)(47); K.S.A. 60-426 to -429; K.S.A. 60-2617; K.S.A. 77-501, *et seq.*; 45 C.F.R. Parts 160, 162 & 164

Safety K.S.A. 60-3101, *et seq.*; K.S.A. 60-31a01, *et seq.*; K.S.A. 75-451 to -458, K.S.A. 25-5426; K.S.A. 58-25,137

Technology K.S.A. 21-6101

Employment 29 U.S.C. 2601, *et seq.*; 42 U.S.C. § 2000e, *et seq.*; K.S.A. 44-501, *et seq.*; K.S.A. 44-701, *et seq.*; K.S.A. 44-1131 to -1132

Financial K.S.A. 74-7305; K.A.R. 20-2-3; K.A.R. 20-2-6; K.A.R. 20-2-9; K.A.R. 30-4-64

Education 20 U.S.C. § 1092(8)(b)(iv); 20 U.S.C. § 1681, *et seq.*; 20 U.S.C. § 6301, *et seq.*; 34 C.F.R. § 106.8(a)

Survivors with Disabilities 42 U.S.C. § 12101, *et seq.*

Language Access 42 U.S.C. § 2000d, *et seq.*; K.S.A. 75-4351
Immigration 8 U.S.C. § 1101(a)(15)(T); 8 U.S.C. § 1101(a)(15)(U); 8 U.S.C. § 1154; Att’y Gen. Order No. 2049-96, 61 Fed. Reg. 45,985 (Aug. 30, 1996), *available at* <http://www.usdoj.gov/archive/opd/agorderf.htm>. State v. Scott, 183 P.3d 801, 816-17 (Kan. 2008).

Medical Care K.S.A. 65-448

The Criminal Justice System K.S.A. 21-6604; K.S.A. 21-6703; K.S.A. 21-6607; K.S.A. 21-6813; K.S.A. 21-6817(a)(1); K.S.A. 22-3718; K.S.A. 22- 3424; K.S.A. 22-3727; K.S.A. 22-4614; K.S.A. 74-7335.

Kansas Crime Victims Bill of Rights K.S.A. 74-7333

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