

NEKLS Director's Institute Fall 2018  
September 28, 2018

# SECURITY, PRIVACY AND THE LAW



**SLOAN LAW FIRM**

SLOAN, EISENBARTH, GLASSMAN  
McENTIRE & JARBOE, L.L.C.

- Video recording in public places is permissible.
- Audio recording is permissible so long as at least one party to the conversation is aware of the recording.

## SECURITY CAMERAS

**K.S.A. 21-6101. Breach of privacy.** (a) Breach of privacy is knowingly and without lawful authority:

. . .

(6) installing or using a concealed camcorder, motion picture camera or photographic camera of any type to secretly videotape, film, photograph or record, by electronic or other means, another identifiable person under or through the clothing being worn by that other person or another identifiable person who is nude or in a state of undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to invade the privacy of that other person, under circumstances in which that other person has a reasonable expectation of privacy.

# SECURITY CAMERAS

## Ways to ensure no breach of privacy:

- ▶ Post notices that cameras are in use.
- ▶ Have a publicly available policy regarding use of security cameras.
- ▶ Position cameras to record public areas such as entrances/exits, circulation desk, public computers.
  - ▶ NEVER place cameras in restrooms or other areas where a patron or employee has a reasonable expectation of privacy.

# SECURITY CAMERAS

- ▶ Are we required to have signs up notifying patrons we have security cameras?
  - ▶ No
- ▶ At least one of our cameras captures footage of the houses across the street. A crime occurred there, and the residents want access to the footage (or for the police to have access). What should we do in that situation?
  - ▶ If police obtain a warrant, must comply
  - ▶ If voluntarily producing, consider:
    - ▶ Who is designated to review the footage?
    - ▶ Are you letting the police review it or producing a copy?

## SECURITY CAMERAS

How do you handle security cameras/recorded footage?

- ▶ All policy driven, no legal requirements
- ▶ Consider:
  - ▶ How long are you going to retain footage?
  - ▶ Who has access to the footage?

If we witness something illegal on camera, how do we respond?

- ▶ Call the police
- ▶ Patron privacy policy

## SECURITY CAMERAS

American Library Association Code of Ethics provides:

*We protect each library user's right to privacy and confidentiality with respect to information sought or received and resources consulted, borrowed, acquired, or transmitted.*

Kansas Law exempts from public records requests "library patron and circulation records which pertain to identifiable individuals."

KSA 45-221(a)(23)

# PATRON PRIVACY

- ▶ Police officer comes to library and says police have concerns about Johnny being violent at school. They want to see if he has checked out any materials regarding bomb making. Do you have to provide?
  - ▶ No, you have an ethical obligation to protect Johnny's privacy
  - ▶ If police obtain a warrant, then will have to comply or seek legal counsel if appropriate to challenge
- ▶ A patron finds child pornography on a library printer. Computer records trace the printing back to patron Tom. What do you do?
  - ▶ Report it to the police
  - ▶ Policy regarding appropriate use of library resources, materials

## PATRON PRIVACY

## Public Records:

- ▶ Employee Name
- ▶ Position
- ▶ Salary
- ▶ Length of Service

## Not Subject to Disclosure:

- ▶ Personnel records
- ▶ Performance reviews
- ▶ Applications for Employment

# EMPLOYEE PRIVACY

Certain Employee Information MUST be released to a Former Employee:

- Tenure of employment
- Occupational classification
- Wage rate

K.S.A. 44-808(3)

EMPLOYEE PRIVACY

Certain Information MAY be given to a Prospective Employer:

- Date of Employment;
- Pay Level;
- Job Description and Duties; and
- Wage History

AND IF REQUESTED IN WRITING:

- Copies of written employee evaluations prior to separation of employment
- Whether the separation was voluntary or involuntary and the reason therefor.

MUST BE PROVIDED IN WRITING.

K.S.A. 44-119a

# EMPLOYEE PRIVACY

It is the employer's absolute duty to furnish a safe workplace and equipment. The rule is simply that an employer has the duty not to expose his employees to perils which the employer may guard against by the exercise of reasonable care.

*Smith v. Massey-Ferguson, Inc.*, 256 Kan. 90, 111, 883 P.2d 1120, 1134, 1994 Kan. LEXIS 137, \*47 (emphasis added)

An injured employee's exclusive remedy will be through a worker's compensation claim.

## EMPLOYEE SECURITY

"A possessor of land who holds it open to the public for entry for his business purposes is subject to liability to members of the public while they are upon the land for such a purpose, for physical harm caused by the accidental, negligent, or intentionally harmful acts of third persons or animals, and by the failure of the possessor to exercise reasonable care to

(a) discover that such acts are being done or are likely to be done, or

(b) give a warning adequate to enable the visitors to avoid the harm, or otherwise to protect them against it."

The general rule is that a landowner has no duty to protect an invitee on the landowner's premises from a third party's criminal attack unless the attack is reasonably foreseeable. Prior similar acts committed upon invitees furnish actual or constructive notice to a landowner.

*Nero v. Kansas State Univ.*, 253 Kan. 567, 584, 861 P.2d 768, 780, 1993 Kan. LEXIS 135, \*38-39

# PATRON SECURITY

What is Reasonable Care?

As a test of liability for negligence, the degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances.

PATRON SECURITY

- (1) Library staff has been made aware of a group of individuals who have been using drugs in the library bathroom. A child ingests a substance they left behind and overdoses. Is the library liable?
  
- (2) An individual brings a gun into the library and shoots three people, killing one. Is the library liable?

PATRON SECURITY

## Dealing with Problem Patrons

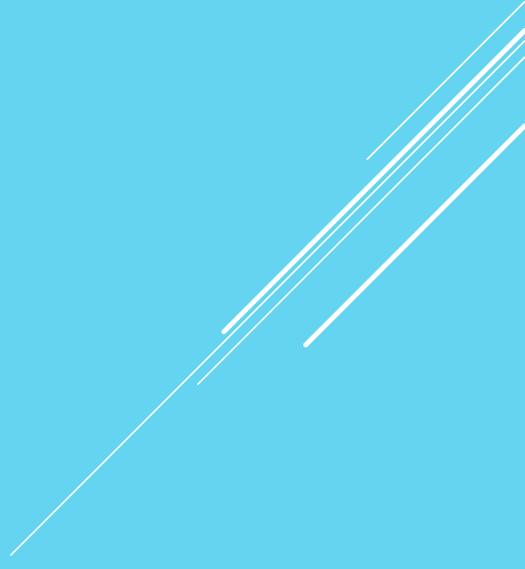
**K.S.A. 12-1227. Use of library; rules and regulations.** Every library established under, or governed by the provisions of this act shall be free to the use of the inhabitants of the municipality in which located, subject always to such reasonable rules and regulations as the library board may adopt, and said board may exclude from the use of said library any and all persons who shall willfully violate such rules. The library board may extend the use and privilege of such library to nonresidents of the municipality and may make exchanges of books with any other library upon such terms and conditions as said board may from time to time by its regulations prescribe.

# PATRON SECURITY

## Restraining Orders/Protection Orders

- ▶ Protection from Abuse/Protection from Stalking and Sexual Abuse (most common)
- ▶ Criminal Orders/Bond Restrictions
- ▶ Civil Restraining Orders

PATRON SECURITY

A decorative graphic consisting of several parallel white lines of varying lengths, slanted upwards from left to right, located in the bottom right corner of the slide.

- ▶ Protection Orders May Protect Employees By Prohibiting the Restrained Party from Coming to the Place of Employment
- ▶ Protection Orders DO NOT contain a distance limitation

## PATRON SECURITY

### Order

#### The Court Orders:

- This Final Order of Protection from Abuse replaces any previous Temporary Order of Protection from Abuse entered by the court and serves as notice of termination of that order upon service of this final order on the defendant.
- The defendant shall not assault, threaten, abuse, harass, follow, stalk, or interfere with the privacy or rights of the protected person(s) wherever they may be. [ NCIC 01 & 02 ]
- The defendant shall not use, attempt to use, or threaten to use physical force, that would reasonably be expected to cause bodily injury, against the protected person(s). [ NCIC 01 & 02 ]
- The defendant shall not threaten a member of the protected person's family or household. [ NCIC 02 ]
- The defendant shall not enter or come on or around the premises, the residence, property, school, or place of employment of the protected person(s) or other family or household members. [ NCIC 04 ]
- The defendant shall not contact the protected person(s), either directly or indirectly, in any manner, except as authorized by the court in paragraph 8(b) of this order. [ NCIC 05 ]
- The defendant shall not contact, in any manner, the protected person's employer, employees, fellow workers, or others with whom the communication would be likely to cause annoyance or alarm to the protected person. [ NCIC 05 ]
- The defendant shall not direct or request another to contact the protected person(s), either directly or indirectly, in any manner, except as authorized by the court in paragraph 8(b) of this order. [ NCIC 05 ]
- Law enforcement officers are directed to grant any assistance necessary to protect the protected person(s) from abuse by the defendant, and to provide any other assistance necessary to enforce these orders, including the order excluding the defendant from the protected person(s) place of residence, wherever it may be. [ NCIC 08 ]

Male patron, 70, asks library staff for assistance with online services. Patron tells staff and other patrons that he has an online girlfriend (that he's never met, or seen, or talked to on the phone), he sends her money, gift certificates, has applied for loans for "her", etc. Staff is concerned he is being catfished and financially taken advantage of. Patron is resistant to staff concerns.

What can library staff do?

FINAL EXAM

Danielle N. Davey

Sloan, Eisenbarth, Glassman, McEntire & Jarboe

534 S. Kansas Ave., Ste 1000

900 Massachusetts, Suite 200

Topeka, KS 66603

Lawrence, KS 66044

(785) 357-6311

(785) 842-6311

[ddavey@sloanlawfirm.com](mailto:ddavey@sloanlawfirm.com)

[www.sloanlawfirm.com](http://www.sloanlawfirm.com)

QUESTIONS?