

SESSION OF 2017

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2069

As Amended by Senate Committee on Judiciary

Brief*

HB 2069 would create or amend law related to law enforcement, as follows.

Law Enforcement Training Act Definitions

The bill would amend the definition of “conviction,” as used in the section of the Kansas Law Enforcement Training Act setting forth the requirements for applicants for certification under the Act, to include any deferred judgment agreement entered into for a misdemeanor crime of domestic violence, or any such agreement entered into on or after July 1, 1995, for a felony. The bill would also add to this definition any diversion or deferred judgment agreement entered into for a misdemeanor offense that the Kansas Commission on Peace Officers’ Standards and Training (CPOST) determines reflects on the honesty, trustworthiness, integrity, or competence of the applicant as defined by rules and regulations by CPOST. Under current law, the definition includes judgments by military court martial or state or federal courts, whether or not expunged; any diversion agreement for a misdemeanor crime of domestic violence; or any diversion agreement entered into on or after July 1, 1995, for a felony.

Disclosure of Law Enforcement Officer Applicant Files

The bill would create a process for disclosure of a law enforcement officer applicant’s files if the candidate has been

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

employed by another state or local law enforcement agency or governmental agency. For these purposes, "files" would be defined as all performance reviews or other files related to job performance, commendations, administrative files, grievances, previous personnel applications, personnel-related claims, disciplinary actions, internal investigation files, suspensions, investigation-related leave, documents concerning termination or other departure from employment, all complaints, and all early warning information. "Early warning information" would be defined as information from a data-based management tool designed to identify officers who may be exhibiting precursors of problems on the job that can result in providing those officers with counseling or training to divert them from conduct that may become a disciplinary matter. The bill also would define other key terms.

When interviewing an applicant who has been employed by another agency for a law enforcement officer position, hiring agencies would require such applicant to execute a written waiver that explicitly authorizes each agency that has employed the applicant to disclose the applicant's files to the hiring agency and releases the hiring agency and each agency that employed the applicant from any liability related to the use and disclosure of the files. An applicant who refuses to execute the waiver would not be considered by the hiring agency. A copy of the waiver would be provided to each agency along with the request for information.

The bill would require the agency to disclose the files to the hiring agency within 21 days of receiving the request either by providing copies to the hiring agency or allowing the hiring agency to review the files at the agency's office. The bill would establish an exception if the agency is prohibited from providing the files pursuant to a binding nondisclosure agreement executed before July 1, 2017, to which such agency is a party. Agencies would be required to disclose an applicant's files, however, if such files are subject to a binding nondisclosure agreement executed on or after July 1, 2017, but the bill would limit disclosure to only those files necessary to determine an applicant's qualifications and fitness for

performance of a law enforcement officer's duties. Further, the bill would allow agencies to redact personally identifiable information of persons other than the applicant in files disclosed. The bill states an agency would not be liable for complying with the provisions of this section in good faith or participating in an official oral interview with an investigator regarding the applicant.

The bill would prohibit disclosure of the files except as necessary for such agency's internal hiring processes and states the files would constitute a record of the agency for the purposes of the Kansas Open Records Act (KORA) and would not be subject to discovery, subpoena, or other process directed toward the hiring agency. The bill would add a section to the KORA to specify a request for records defined by the bill as "files" that were submitted to an agency would be directed to the agency that made, maintained, or kept such files.

Requests for Law Enforcement Assistance

The bill would amend law regarding requests for law enforcement assistance from other jurisdictions. Specifically, the bill would add a department of corrections in another jurisdiction to the list of agencies from whom assistance may be requested and would add the Secretary of Corrections (Secretary), or the Secretary's designee, to those persons who may request such assistance.

Background

HB 2069—Law Enforcement Training Act Definitions

HB 2069 was introduced by the House Committee on Judiciary at the request of CPOST. As introduced, the bill contained the provision amending the definition of "conviction" in the Kansas Law Enforcement Training Act.

In the House Committee hearing, Representative Whitmer, as chairperson of CPOST, testified in support of the bill. Also testifying in support were counsel for CPOST and a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association. The Director of the Kansas Bureau of Investigation (KBI) submitted written-only testimony supporting the bill. No neutral or opponent testimony was provided.

In the Senate Committee on Judiciary hearing, Representative Whitmer, as chairperson of CPOST, testified in support of the bill. Counsel for CPOST also testified in support. The Director of the KBI and a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association submitted written-only testimony supporting the bill. No neutral or opponent testimony was provided.

The Senate Committee amended the bill to add language modified from SB 180, regarding disclosure of law enforcement officer applicant files, and the contents of HB 2262, as amended by House Committee, regarding requests for law enforcement assistance. Further background information regarding SB 180 and HB 2262 is provided below.

According to the fiscal note prepared by the Division of the Budget, CPOST indicates enactment of HB 2069 would have no fiscal effect. Fiscal note information for SB 180 and HB 2262 is provided below.

SB 180—Disclosure of Law Enforcement Officer Applicant Files

SB 180 was introduced at the request of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association. In the Senate Committee on Judiciary hearing, a representative of those organizations and a representative of the Kansas Association

of Counties appeared in support of the bill. A representative of the League of Kansas Municipalities provided neutral testimony and offered suggestions for amendments to the bill. No other testimony was provided.

The Senate Committee modified the language of SB 180 pursuant to an amendment agreed to by the conferees and added this modified language to HB 2069. The amendment would change “candidate” to “applicant,” add provisions applicable to files subject to a binding nondisclosure agreement executed on or after July 1, 2017, allow agencies to redact personally identifiable information of persons other than the applicant in files disclosed, modify the definition of “files” and “hiring agency,” add a definition for “early warning information,” and add a section to the KORA concerning requests for records defined under the bill as “files.”

According to the fiscal note prepared by the Division of the Budget, the Attorney General and CPOST indicate SB 180, as introduced, would have no fiscal effect.

HB 2262—Requests for Law Enforcement Assistance

HB 2262 was introduced by the House Committee on Corrections and Juvenile Justice at the request of the Kansas Department of Corrections (KDOC). As introduced, the bill would have amended the definition of “law enforcement officer” in the law enforcement assistance statute to include employees of the KDOC and a correctional officer in another jurisdiction. In the House Committee hearing, a KDOC representative testified as a proponent for the bill, with a proposed amendment. No neutral or opponent testimony was provided.

The House Committee adopted an amendment modified from KDOC’s proposed amendment. The modified amendment restored the current definition of “law enforcement officer” and added the Secretary to the list of persons who may request assistance and a department of

corrections in another jurisdiction to the list of entities from whom assistance may be requested.

In the Senate Committee on Judiciary hearing, the same proponent testified as before the House Committee. No neutral or opponent testimony was provided.

According to the fiscal note prepared by the Division of the Budget on HB 2069, as introduced, KDOC indicates enactment of the bill would have no fiscal effect.