

SESSION OF 2018

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2571

As Amended by Senate Committee on Judiciary

Brief*

HB 2571, as amended, would amend the statute governing disclosure of audio or video recordings made and retained by law enforcement using a body camera or a vehicle camera (law enforcement recordings), as follows.

Under current law, the statute allows, in addition to any disclosure authorized under the Kansas Open Records Act (KORA), certain persons to request to listen to or view law enforcement recordings and requires the law enforcement agency to allow such listening or viewing. The bill would add a provision requiring the agency to allow the listening or viewing within 20 days after the request is made.

Under current law, an “heir at law” is one of the persons who may make the request. The bill would add the attorney for an heir at law to the list of persons who may make the request. The bill also would add a definition for “heir at law” to include an executor or an administrator of a decedent; the spouse of a decedent, if living; if there is no living spouse of a decedent, an adult child of a decedent, if living; or, if there is no living spouse or adult child of a decedent, a parent of a decedent, if living. (*Note:* Under current law, an executor or administrator of a decedent may make a request, so the bill only changes the organization, not the substance, of the law allowing these persons to make a request.)

In the list of requesters, the bill would change “a parent or legal guardian of a person under 18 years of age who is a subject of the recording” to “any parent or legal guardian of a

*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>

person under 18 years of age who is a subject of the recording.”

The bill would clarify that requests to listen to or view a law enforcement recording are to be made in accordance with procedures adopted by public agencies pursuant to KORA requirements.

Background

The bill was introduced by Representative Alcala. As introduced, the bill would also have amended KORA provisions regarding copying fees, records maintained on computer facilities, and criminal investigation records, and would have set forth additional requirements for disclosure, redaction, and public inspection and copying of law enforcement recordings.

In the House Committee on Judiciary hearing, Representative Alcala, private citizens, and representatives of the Kansas Association of Broadcasters, Kansas Interfaith Action, Kansas Press Association, and Kansas Sunshine Coalition for Open Government testified in support of the bill. Written-only proponent testimony was provided by private citizens.

A representative of the Kansas County and District Attorneys Association testified as a neutral conferee.

Representatives of the Johnson County Sheriff's Office, Kansas Association of Chiefs of Police, Kansas Peace Officers Association, Kansas Sheriffs' Association, and League of Kansas Municipalities testified in opposition to the bill. Written-only opponent testimony was submitted by the Lenexa chief of police and representatives of the Kansas Association of Counties, Kansas State Lodge of the Fraternal Order of Police, and Office of the Attorney General.

The House Committee amended the bill to remove all sections except the section amending the statute governing disclosure of law enforcement recordings. Within this section, the House Committee amended the bill to:

- Change the new time limit from 24 hours to 20 days;
- Change the definition of “heir at law” that would have been added by the bill, as introduced;
- Add an attorney for an heir at law as a person who may make a request; and
- Remove additional requirements for disclosure, redaction, and public inspection and copying of law enforcement recordings that would have been added by the bill, as introduced.

In the Senate Committee on Judiciary hearing, representatives of the Johnson County Sheriff’s Office, Kansas Association of Broadcasters, Kansas Association of Chiefs of Police, Kansas Peace Officers Association, Kansas Press Association, Kansas Sheriffs’ Association, Kansas State Lodge of the Fraternal Order of Police, and League of Kansas Municipalities submitted written-only testimony supporting the bill. A representative of the Kansas County and District Attorneys Association submitted written-only neutral testimony. No opponent testimony was provided. (*Note:* Because the Senate Committee had previously heard SB 360, regarding similar subject matter, conferees on HB 2571 were asked to submit written-only testimony.)

The Senate Committee amended the bill by clarifying the procedure for submitting a request.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Kansas Bureau of Investigation indicates enactment of the bill would result in an increase in KORA requests, which would require it to hire for

1.00 attorney FTE position at an ongoing cost of \$100,855 beginning in FY 2019.

The Office of Judicial Administration indicates enactment of the bill could increase the number of arguments brought before the court regarding law enforcement recordings, which could increase the amount of time spent on cases filed in district courts and the number of appeals related to offenders convicted using such recordings. However, the number of additional arguments and appeals that would be presented is unknown and the fiscal effect cannot be estimated.

The Kansas Association of Counties indicates enactment of the bill would increase expenditures of county law enforcement agencies because it would require additional employee labor and the purchasing and licensing of redaction software. However, because the number of cases and recordings that would require review is unknown, the fiscal effect cannot be estimated. The League of Kansas Municipalities indicates enactment of the bill would increase expenditures of local law enforcement agencies due to costs related to the storage of recordings; attorney time to review recordings for redaction; redaction equipment; staff time for recording review, maintenance, and recovery; and additional cybersecurity efforts to secure the data collected. However, because the number of cases and recordings that would require review is unknown, the fiscal effect cannot be estimated. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2019 Governor's Budget Report*.