

Testimony to the Senate Judiciary Committee
In Support of HB 2069
March 15, 2017

Chairman Wilborn and members of the Committee:

HB 2069 amends the Kansas Law Enforcement Training Act, K.S.A. 74-5601 et seq., by including “deferred judgment agreement” in the definition of conviction in K.S.A. 74-5605(d).

The minimum qualifications to become a certified law enforcement officer are found in K.S.A. 74-5605(b)(1) through and (8).

K.S.A. 74-5605(b)(3) requires an applicant to:

“not have been convicted of a crime that would constitute a felony under the laws of this state, a misdemeanor crime of domestic violence or a misdemeanor offense that the commission determines reflects on the honesty, trustworthiness, integrity or competence of the applicant as defined by rules and regulations of the commission.”

K.S.A. 74-5616(b)(1) gives the commission the authority to deny, suspend, condition, censure, reprimand, or revoke the law enforcement certification of those that fail to meet and maintain the requirements of K.S.A. 74-5605.

Pursuant to HB 2069 - K.S.A. 74-5605(d) would be amended as follows:

“(d) As used in this section, “conviction” includes rendering of judgment by a military court martial pursuant to the uniform code of military justice, by a court of the United States or by a court of competent jurisdiction in any state, whether or not expunged; and any diversion *or deferred judgment* agreement entered into for a misdemeanor crime of domestic violence *or misdemeanor offense that the commission determines reflects on the honesty, trustworthiness, integrity or competence of the applicant*

as defined by rules and regulations of the commission and any diversion *or deferred judgment* agreement entered into on or after July 1, 1995, for a felony.”

K.A.R. 106-2-2 and 106-2-2a define the misdemeanor offenses that the commission determines reflects on the honesty, trustworthiness, integrity or competence of the applicant.

The Commission has experienced an issue where individuals have entered deferred judgment agreements in other states for a felony and some municipal courts within the state allow misdemeanors to be deferred - including domestic violence offenses. States such as Texas and Florida routinely use deferred judgment agreements and not diversion agreements.

In a diversion agreement, the defendant and the prosecution enter a pre-trial agreement. The defendant stipulates to the facts of the case and waives his right to a speedy trial. The case is moved off docket and the defendant completes the requirements of the agreement. The case is dismissed with no findings at the end of the agreement if the defendant did what was expected of him. If the defendant violates the terms of the agreement, the case is prosecuted on stipulated facts.

In a deferred judgment agreement, the defendant enters a plea and is found guilty. The defendant is sentenced – with the sentence being suspended. The defendant is then placed on supervision. At the end of supervision, the defendant withdraws his plea if he completes what is expected of him. If not, the defendant’s sentence is imposed or further findings are made.

In each case, the defendant admits to the underlying facts of their case and are taking advantage of an agreement to allow them, if successful, to avoid a conviction on their record. The conduct is what the commission is interested in. And as such, there is no functional distinction between diversion and a deferred judgment agreement for purposes of meeting certification qualifications.

It is worth noting that K.S.A. 21-5414(c)(2)(A) “Conviction” includes entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings for domestic battery in determining a first, second, third or subsequent conviction for sentencing purposes.

Michelle R. Meier
Commission Counsel