

Records Related to Law Enforcement Officers—Disclosure of Files Related to Previous Employment; Central Registry Records; SB 180

SB 180 creates and amends law regarding records related to law enforcement officers.

Disclosure of Files Related to Previous Law Enforcement or Government Employment

The bill creates a process for disclosure of a law enforcement officer applicant's files if the applicant has been employed by another state or local law enforcement agency or governmental agency. For these purposes, "files" is 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" is 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 defines other key terms.

When interviewing an applicant who has been employed by another agency for a law enforcement officer position, hiring agencies shall 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 shall not be considered by the hiring agency. A copy of the waiver shall be provided to each agency along with the request for information.

The bill requires 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 establishes an exception if the agency is prohibited from providing the files pursuant to a binding nondisclosure agreement executed before July 1, 2018, to which such agency is a party. However, agencies must disclose an applicant's files if such files are subject to a binding nondisclosure agreement executed on or after July 1, 2018, but the bill limits 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 allows agencies to redact personally identifiable information of persons other than the applicant in files disclosed. The bill states an agency shall 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 prohibits disclosure of the files by the hiring agency, except as necessary for such agency's internal hiring processes, and states the files constitute a record of the agency that made, maintained, or kept the files for the purposes of the Kansas Open Records Act (KORA) and are not subject to a KORA request directed toward the hiring agency. Except in a civil action involving negligent hiring, the files are not subject to discovery, subpoena, or other process directed toward the hiring agency obtaining the files. The bill adds a provision to KORA to specify a request for records defined by the bill as "files" that were submitted to an agency must be directed to the agency that made, maintained, or kept such files.

Central Registry Records

The bill amends the section of the Kansas Law Enforcement Training Act (KLETA) related to the central registry of Kansas police officers and law enforcement officers.

The bill specifies the registry is to include all records received or created by the Kansas Commission on Peace Officers' Standards and Training (CPOST) pursuant to this section and all records related to violations of KLETA, including records of complaints received or maintained by CPOST.

The bill removes language stating the registry shall be made available only to agencies that appoint or elect police or law enforcement officers and adds provisions governing disclosure of records in the registry.

All records in the registry shall be confidential and not subject to disclosure pursuant to KORA, except the bill requires records contained in the registry, other than investigative files, to be disclosed:

- To an agency that certifies, appoints, or elects police or law enforcement officers;
- To the person who is the subject of the information, but CPOST may require disclosure in a manner to prevent identification of any other person who is the subject or source of the information;
- In any proceeding conducted by CPOST in accordance with the Kansas Administrative Procedure Act (KAPA), in an appeal from such proceeding, or to a party or party's attorney in such proceeding;
- To a municipal, state, or federal licensing, regulatory, or enforcement agency with jurisdiction over acts or conduct similar to acts or conduct that would constitute grounds for action under KLETA; or
- To the director of police training of the Law Enforcement Training Center when such disclosure is relevant to the director's pretraining evaluation of applicants for admission.

Additionally, the following records may be disclosed to any person pursuant to KORA:

- A record containing only a police or law enforcement officer's name, the name of a police or law enforcement officer's current employer, the police or law enforcement officer's dates of employment with the police or law enforcement officer's current employer, the name of previous law enforcement employers and the dates of employment with each each employer, a summary of the trainings completed by the police or law enforcement officer as reported to CPOST, and the status of the police or law enforcement officer's certification under KLETA; and
- Statewide summary data without personally identifiable information.

The bill provides that KORA exceptions shall apply to any records disclosed under the above provisions.

Finally, the bill specifies that records may be disclosed as provided in KAPA.

The confidentiality provision and disclosure exceptions created by the bill will expire on July 1, 2023, unless the Legislature reviews and reenacts the provision prior to that date.