

SESSION OF 2024

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2777**

As Amended by Senate Committee on Public  
Health and Welfare

**Brief\***

HB 2777, as amended, would prohibit the State Fire Marshal (Marshal) and any of the Marshal's representatives from wearing or operating a body camera or other audio or video recording device during an on-site inspection in a licensed care facility or community-based locations where individuals with intellectual and developmental disabilities (I/DD) receive habilitation services.

**Definitions**

The bill would define these terms:

- “Body camera” would mean a device that is worn by a law enforcement officer that electronically records audio or video of such officer’s activities; and
- “Licensed care facility” would mean child care facilities and adult care homes and include the following types of facilities:
  - Child care facility, as defined in KSA 65-503, which includes the following:
    - A facility maintained by a person who has control or custody of one or more children under 16 years of age, unattended by parent or guardian, for the purpose of

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\*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>

- providing the children with food or lodging, or both, except children in the custody of the Secretary for Children and Families who are placed with a prospective adoptive family or who are related to the person by blood, marriage, or legal adoption;
- Children's home, orphanage, maternity home, day care facility, or other facility of a type determined by the Secretary of Health and Environment to require regulation;
  - Child placement agency or child care resource and referral agency, or a facility maintained by such an agency for the purpose of caring for children under 16 years of age; or
  - Any receiving or detention home for children under 16 years of age provided or maintained by, or receiving aid from, any city or county or the State;
  - Qualified residential treatment program, which includes a program designated by the Secretary for Children and Families as a qualified residential treatment program pursuant to federal law;
  - Psychiatric residential treatment facility, which includes any non-hospital facility with a provider agreement with the licensing agency to provide the inpatient services for individuals under the age of 21 who will receive highly structured, intensive treatment for which the licensee meets the requirements as set forth by rules and regulations created and adopted by the Secretary for Children and Families;

- Secure facility, which means a facility, other than a staff secure facility or juvenile detention facility, that is operated or structured so as to ensure that all entrances and exits from the facility are under the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or that relies on locked rooms and buildings, fences, or physical restraint in order to control behavior of its residents. No secure facility is in a city or county jail;
- Shelter facility, which means any public or private facility or home, other than a juvenile detention facility or staff secure facility, that may be used in accordance with the Revised Kansas Code for Care of Children for the purpose of providing either temporary placement for children in need of care prior to the issuance of a dispositional order or longer-term care under a dispositional order;
- Youth residential facility, which means any home, foster home, or structure that provides 24-hour-a-day care for children and that is licensed by the Kansas Department of Health and Environment;
- Any nursing facility, nursing facility for mental health, intermediate care facility for people with intellectual disability, assisted living facility, residential health care facility, home plus, boarding care home, and adult day care facility, all of which are classifications of adult care homes and are required to be licensed by the Secretary for Aging and Disability Services;
- Medical care facilities, which would include hospitals, ambulatory surgical centers, or recuperation centers; and

- Hospice facilities that are certified to participate in the Medicare program under 42 C.F.R. § 418.1 *et seq.*

## **Background**

The bill was introduced by the House Committee on Health and Human Services at the request of Representative Bergquist on behalf of Representative Landwehr.

### ***House Committee on Health and Human Services***

In the House Committee hearing on February 14, 2024, representatives of the Kansas Hospital Association (KHA) and LeadingAge Kansas provided **proponent** testimony, generally stating that there is concern for patient privacy and potential facility liability because staff would be knowingly admitting individuals wearing video or audio recording devices into a facility that is a covered entity under the Health Insurance Portability and Accountability Act (HIPAA) for a routine, non-emergency-related facility inspection. Representatives also noted that the licensing agency does not utilize video or audio devices during routine licensing facility inspections.

Written-only proponent testimony was provided by representatives of the Alzheimer's Association, Children's Alliance of Kansas, InterHab, and Kansas Health Care Association and Kansas Center for Assisted Living (KHCA/KCAL).

Written-only neutral testimony was provided by the State Fire Marshal.

No other testimony was provided.

The House Committee amended the bill to include additional facility types within the definition of "patient care facility" and to include community-based locations where

individuals with I/DD receive habilitation services as a site where body cameras could not be used by the Marshal.

### ***House Committee of the Whole***

The House Committee of the Whole amended the bill to extend its provisions to all licensed care facilities, including child care facilities.

### ***Senate Committee on Public Health and Welfare***

In the Senate Committee hearing on March 5, 2024, **proponent** testimony was provided by Representative Johnson and a representative of Leading Age Kansas. Proponents generally stated the bill would protect privacy rights of those in a licensed care facility. They noted that current HIPAA regulations allows cameras only after consent by the individual has been obtained, something that is not possible in this situation as current inspections are often unannounced.

Written-only proponent testimony was provided by representatives of KHA and KHCA/KCAL.

Neutral testimony was provided by the State Fire Marshal.

No other testimony was provided.

The Senate Committee amended the bill to clarify that the State Fire Marshal is allowed to collect still photographic evidence of violations discovered during an inspection or investigation.

### **Fiscal Information**

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Marshal indicates

enactment of the bill would have no fiscal effect on agency operations.

State Fire Marshal; body camera; recordings; adult care home; medical care facilities; hospice; developmental disabilities; Secretary for Aging and Disability Services; child care facility