

February 16, 2020

To: Chairman Fred Patton, House Judiciary Committee
From: Mark Schmid, President, JOCO United
RE: Proponent Testimony in support of HB 2424

Mr. Chairman and Members of the Committee:

My name is Mark Schmid and I am appearing on behalf of JOCO United, to testify in favor of HB 2424.

JOCO United is a citizen advocacy group formed following the shooting death of John Albers by an officer of the Overland Park Police Department. We are committed to developing and fostering partnerships between law enforcement, government and the community, to improve public safety, transparency and the response to mental health issues.

Initially, I believe HB 2424 to be a common-sense bill that provides all Kansans with the benefit of knowing that officer involved deaths will be investigated using the best investigative practices possible, practices that many law enforcement agencies in Kansas already use. Each law enforcement agency in Kansas owes it to the public it serves, to use such best practices in order to maintain the public's trust. The appearance of impropriety with law enforcement agencies investigating themselves in such situations, cannot be allowed to stand.

Passage of HB 2424 will also encourage law enforcement agencies to train in specialized investigative techniques, so that every law enforcement agency could participate in mutual aid agreements for the investigation of officer involved deaths.

In addition to the investigative requirements of the bill, it also contains provisions requiring the release of the investigative reports associated with officer involved deaths once the local district attorney determines that no charges will be filed against the involved law enforcement officer. This too, is a common-sense provision that promotes transparency and confidence in prosecutorial decisions.

The specifics of an actual case, illustrate why such records must be available to the public as called for in HB 2424.

On January 20, 2018, a seventeen-year-old high school student, John Albers was killed by Officer Clayton Jenison of the Overland Park, Kansas Police Department. John had been reported to be suicidal and four officers were dispatched to the Albers' home in order to conduct a welfare check.

As Officer Jenison approached the garage, the garage door began to open. Once open, the family minivan driven by John, began to back out of the garage. Officer Jenison drew his

gun, yelled “stop the car” and then fired two shots into the passenger side of the vehicle generally aimed in the direction of the driver.

The vehicle stopped momentarily, then continued backing down the driveway and did a reverse “U” turn. As the vehicle continued up the driveway, Officer Jenison fired eleven more shots into the passenger side of the vehicle. Thereafter, the vehicle apparently in neutral, coasted down the driveway and into the yard across the street. John Albers was dead on the scene.

As called for in HB 2424, the Overland Park Police Department did not investigate this officer involved death. Instead, it was investigated by the Johnson County Officer Involved Shooting Investigation Team, made up of officers from police departments throughout the county. This independent investigation “best practice,” is one that all Kansans are entitled to.

Once the investigation was completed, a report was forwarded to Johnson County District Attorney Steve Howe for a decision on whether charges would be brought against Officer Jenison.

On February 20, 2018, District Attorney Howe held a press conference at which time he announced that he would not be filing charges against Officer Jenison. At the press conference, District Attorney Howe played edited portions of the dashboard camera video from two of the police vehicles that were on the scene. In one of the videos shown, the police vehicle was parked and was facing west. It provides a relatively good view of the incident.

The other video shown, was taken from a police vehicle responding to the scene from the west and was facing east at the time it arrived. It did not fully capture the event.

Although four officers were dispatched and responded to the Albers’ home, dashboard camera video was not played from the other two police vehicles that were dispatched and on the scene. One of those vehicles is shown in Video 1 arriving from the east and turning into the driveway, just as the second series of eleven shots were being fired by Officer Jenison.

In addition to playing the videos referenced above, District Attorney Howe released a “Media Fact Sheet-Press Conference,” setting forth what was labeled as a “SUMMARY OF FACTS AND FINDINGS” of the investigation.

After a review of the videos and Media Fact Sheet released by District Attorney Howe at his press conference, it became clear to me that the statements made in the Media Fact Sheet did not correspond with what was depicted on the released videos.

Subsequently, in April of 2018, the Albers family filed suit against Officer Jenison and the Overland Park Police Department, in the United States District Court for the District of Kansas. Pleadings in that case that are open records, led to the discovery of additional

video of portions of the event, taken by a Ring doorbell located across the street from the Albers' house. One of the Ring doorbell videos cast further doubt on the accuracy of District Attorney Howe's recitation of the facts in the Media Fact Sheet.

Additionally, such pleadings also contained the report of an expert witness hired by the Albers' attorney, to reconstruct the incident from the available evidence. The purpose of this was to determine and explain vehicle speed and location during the shooting sequence and the proximity of Officer Jenison to the minivan as the shots were fired.

That expert witnesses report directly contradicts the facts as set forth in District Attorney Howe's Media Fact Sheet with regard to the positioning of Officer Jenison in relation to the minivan, as well as the speed of the minivan as it backed out of the garage.

Because of these substantial discrepancies, I submitted requests pursuant to the Kansas Open Records Act to obtain the investigative report of the Johnson County Officer Involved Shooting Investigation team, the same report that was submitted to District Attorney Howe. Such report would have been expected to include all videos obtained from all sources during the investigation, along with laser measurements made the night of the incident, as well as any subsequent reconstruction made by the investigation team using such measurements and the available videos. Additionally, all witness statements taken would have been available, including that of Officer Jenison. Ballistic reports would have also been included.

In this case, the release of the Johnson County Officer Involved Shooting Investigation Team report as called for under HB 2424, would have made it possible to confirm whether District Attorney Howe's Media Fact Statement was accurate.

My Kansas Open Record Act requests to District Attorney Howe for the investigative report were denied. Why?

At best, the failure to provide such investigative report in light of the available contradictory information, creates the impression of impropriety. At worst, there is actual impropriety. The public deserves to know the answer in order to have full confidence in law enforcement and the prosecutorial function. HB 2424 provides the necessary transparency to insure such confidence.

The reasons that have been given against disclosure are not persuasive.

- Privacy concerns have already been addressed in the bill itself.
- With relatively few police shootings throughout Kansas each year, the cost of compliance should not be of concern where issues of public trust and transparency are involved.

- The notion that releasing the requested information will give away police investigative secrets is absurd.
- Contrary to comments made recently by District Attorney Howe, additional video and the related investigative materials would have helped substantially in determining what, in fact, happened. Every piece of evidence helps.

HB 2424 is not an anti-law enforcement bill. Instead it is a bill that provides needed transparency and promotes public trust in law enforcement and the local prosecutor. As such, it is pro law enforcement.

If there is nothing to hide, why the opposition?

I'll close with these very applicable Bible verses from John 3:20-21.

²⁰ Everyone who does evil hates the light and will not come into the light for fear that their deeds will be exposed. ²¹ But whoever lives by the truth comes into the light, so that it may be seen plainly that what they have done has been done in the sight of God.

I urge you to vote for the light.

Thank you for the opportunity to present this testimony to you today.

Mark Schmid
President, JOCO United