

February 14, 2020

Dear Rep. Patton and members of the House Judiciary Committee:

Thank you for the opportunity to submit this testimony in support of HB 2424.*

The Kansas Open Records Act (KORA) affords law enforcement agencies broad discretion to deny citizens' requests for disclosure of "criminal investigation records."

HB 2424 would provide for disclosure only in one narrow circumstance: when a law enforcement officer kills someone and is not charged with any crime. The bill provides that, in this circumstance, the law enforcement agency investigating the death must produce a report on the investigation and provide it to the county or district attorney; then, the county or district attorney "shall release the report with redactions of information otherwise protected from disclosure."

Painful controversies often arise over officer-involved deaths. The disclosure of information proposed in HB 2424 would be an antidote to a community's suspicions and gain public trust through transparency. The U.S. Supreme Court has held, and the Kansas Attorney General has opined, that a matter is in the public interest when it "sheds light on government conduct." Kan. Att'y Gen. Op. 2006-8, citing *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 762 (1989). This bill is in the public interest for exactly that reason: it would shed light on a law enforcement agency's decision-making when the agency declines to criminally charge an officer who took someone's life.

To be sure, in many circumstances, law enforcement agencies should be allowed to exercise discretion under KORA to withhold records from the public, such as those created in connection with active investigations into contemporaneous criminal activity. However, this bill is important because it strikes a fair balance between law enforcement's goal to keep the community safe and the public's need to understand why law enforcement decides not to prosecute one of its own.

When an officer is criminally charged for killing someone, the matter becomes public, and the basis for the charge against the officer is known. HB 2424 simply proposes that, when an officer is not charged, the basis for that outcome also be publicly known.

Respectfully,

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* Biographical note: I was on the faculty of the University of Kansas School of Law until retiring last year. Before then, I taught classes in First Amendment law and related subjects. Now I only teach occasionally on a part-time basis. I remain active in assessing proposed legislation that affects open government and expressive freedom. I do so through a public interest organization I formed, Lex Lumina LLC, and as a volunteer in other organizations. The opinion I express in this testimony is entirely my own and is not to be taken, in any way, as representing views or positions of the University of Kansas or the School of Law on any matter.