



Kansas Bureau of Investigation

Kirk D. Thompson
Director

Derek Schmidt
Attorney General

**Testimony in Opposition of House Bill 2424
Before the House Standing Committee on Judiciary
Kirk Thompson, Director
Kansas Bureau of Investigation
February 18, 2020**

Chairman Patton and Members of the Committee:

My name is Kirk Thompson and I currently serve as the Director of the Kansas Bureau of Investigation (KBI). Thank you for the opportunity to provide testimony in opposition to House Bill 2424, which proposes to create new requirements for the investigation of "Officer-involved Deaths". The bill also proposes changes to the Kansas Open Records Act (KORA) to require the release of "Criminal Investigation" records related to officer-involved deaths if no criminal prosecution is commenced.

For the past several years, the KBI has collected data with regard to the number of Officer Involved Shooting (OIS) cases in our state. To give the committee some context as to the number of incidents we have been able to document over the past seven and one half years, please consider the following:

- On average, there are 21.2 OIS cases in our state per year.
- Of those cases, 51.2% resulted in a fatality and would be subject to the provisions of this bill.
- The highest number of OIS cases on record during the past seven and one half years was 25 in 2015.
- The KBI investigates on average 14.8 of the OIS cases per year (70%).

As an investigative agency, we have significant experience in this field and have well developed procedures for conducting investigations into these critical incidents. Those procedures and best practices have been developed over time in conjunction with a national best practices effort. I believe, therefore, that we are in a unique position to comment on the provisions of this bill.

First and foremost, the requirement that all such investigations be conducted by or lead by investigators from an outside agency is the norm in our state. The requirement that all agencies have a written policy to that effect merely codifies current practice. The KBI has no concern, nor do we believe that other law enforcement agencies in our state will have significant concerns with either of these requirements.

As a reminder, the KBI is currently required by statute to investigate all deaths, except those that result from natural causes, occurring in state prisons and county jails. The current yearly average of in-custody death investigations is 16.6.

With regard to the definition of an officer involved death, there are several concerns as to what types of incidents would actually be covered and when an agency would engage the provisions of the act. Statistically only 50% of individuals involved in an OIS will die from their wounds. However, since those deaths may occur days later, it is our belief that agencies would engage the provisions of this act in any situation where serious injury occurs so as to be in compliance. With regard to "Traffic Related" deaths, we have no data to indicate how many of those types of incidents occur on a yearly basis and how that may impact our case load and resource levels. We have submitted a fiscal note, estimating that we would need ten additional agents to address the provisions of this bill, presuming that roughly the same percentage of law enforcement agencies would utilize our services after passage as utilize our services now.

What is of major concern to the KBI with regard to this bill is the required public disclosure of all investigative reports in those situations where the prosecuting attorney finds that there was no criminal conduct on the part of the law enforcement officer. The cooperation of witnesses to a use of force event is absolutely critical in accurately determining what occurred. However, witnesses are much less likely to provide true and accurate statements when they believe that they will be publically identified or identified unnecessarily to an individual who is charged. Additionally, a great deal of very private information regarding people's lives are collected during an investigation. In the end, much of this information is not relevant to the case and is never disclosed outside of the law enforcement agency and prosecutor's office.

Law enforcement's inability to provide some assurance of confidentiality to witnesses that personal or embarrassing information will only be disclosed if required for prosecution, will degrade our ability to do our jobs. This is not just an issue for use of force cases, it is an issue for any criminal investigation. There must be a balance between impeding an investigation by unnecessary or unwarranted disclosure of information, and the public's desire to know all the details. I believe that this bill inappropriately tips that balance.

It is also important to not make changes to well-established law based upon individual situations or circumstances, but to look at the overarching goal we are trying to accomplish and craft legislation that accomplishes those goals without such a negative impact on the criminal investigative process.

I would urge the committee to take no action on this bill as it is written.

Thank you for the opportunity to offer my thoughts and I would be happy to stand for any questions that you may have

#