



CITY OF TOPEKA

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To: House Committee on Corrections and Juvenile Justice
From: Kelly Trussell, Chief of Prosecution
Date: 3/6/2024
Re: Oral Opposition Testimony to SB 318

I would like to thank Chairman Owens and the Committee for allowing the City of Topeka the opportunity to testify in opposition to SB 318 in particular to an amendment made on the Senate floor.

The bill in front of you, as amended, will significantly impact the operations of municipal prosecutors. This amendment requires prosecuting city attorneys to review *every* audio and video recording that is presented or provided to the prosecutor by the defendant, or the defendant's counsel, if the defendant believes the recording is relevant to the case. This amendment is unnecessary and will result in a waste of resources and time within prosecution of municipal crimes.

First, the wording of the amendment itself is vague and problematic. What does inspect and review mean? Does it mean the prosecutor must watch and listen to every recording in its entirety? What does relevant mean? Criminal cases are governed by the Kansas Rules of Evidence; evidence can be relevant to a case but may not be admissible in court. For example, hearsay can be relevant evidence, but it is not admissible, absent specific exceptions. Often a defendant wants to use evidence that either is inadmissible hearsay or lacks evidentiary foundation. Under this amendment, city prosecutors would be required to review that evidence regardless of its admissibility. With many cities prosecuting thousands of cases each year, it would be impossible to accomplish this review and still allow for timely prosecution of cases. In the era of body camera footage, one incident might have multiple hours of recording of the same incident from different officers. Municipal court sees lots of pro se defendants. If a pro se defendant thinks a TikTok video is relevant, does the prosecutor have to review it?

Additionally, this amendment is unnecessary. As Chief of Prosecution, I daily interact with defendants and defense counsel regarding charged cases. My office works hard to provide an equitable judicial system and when relevant and admissible evidence is presented to prosecution, we do review it. That is the action of a responsible prosecutor and I believe most prosecutors across Kansas do this voluntarily, because that is part of our obligation to ethically present a case.

It is not necessary to require prosecution to review defense items, nor do we think it good public policy for the legislature to begin creating certain very specific rules dictating to prosecutors how they must perform their jobs. This is especially true when the rule blurs the line between the role of prosecutor and judge.

We have attorney ethics rules, as well as case law, that ensures that defendants are protected from bad actors in prosecution. This amendment was added on the floor because of one example of one act by one prosecutor with no details to confirm the accuracy of what occurred. The statements on the floor supporting the amendment said that if the prosecutor had just watched this footage, he would have done the right thing, but it is not the proper role of the prosecutor to also be the judge.

There is already a state-wide criminal procedure in place that would not force a defendant to wait until trial to present evidence they believe is relevant to their case. If the defendant has evidence that would demonstrate innocence, and the prosecutor either refuses to review it, or reviews it but believes it does not exonerate them, then the defendant can easily file a motion to dismiss and show the evidence to the judge at a hearing. There is no reason to have to wait and litigate the case all the way to trial to initially show that evidence. The judge is the proper party to resolve these disputes.

The City did provide Neutral Testimony on SB 318 before the amendment was added. While the City does have some concerns with the underlying bill, as it will make several serious moving violations non-appearance offenses. Prior to the bill being passed out of Committee, we spoke with the proponents and agreed to locally address our concerns rather than ask for an amendment. If the underlying bill becomes law, the City will locally require these offenses be mandatory appearance offenses regardless of the fingerprinting requirement removal.

Thank you for your time and your consideration on this very important issue. This is not a systemic issue that should be addressed in this manner. In light of the amendment in the Senate, this bill is fundamentally flawed. I urge you to oppose SB 318. I am happy to stand for questions at the appropriate time.