

SESSION OF 2016

**CONFERENCE COMMITTEE REPORT BRIEF  
SUBSTITUTE FOR SENATE BILL NO. 22**

As Agreed to April 27, 2016

**Brief\***

Sub. for SB 22 would create and amend law relating to public records and the Kansas Open Records Act (KORA).

***Law Enforcement Recordings From Body Cameras and Vehicle Cameras***

The bill would create new law stating every audio or video recording made and retained by law enforcement using a body camera or a vehicle camera shall be considered a "criminal investigation record," as defined in KORA, thereby bringing such recordings within the exception from KORA for criminal investigation records, as well as under the public interest disclosure provision for such records. This new provision would expire on July 1, 2021, unless reviewed and reenacted prior to that date.

In addition to the existing disclosures under KORA applicable to such recordings, the bill would allow certain persons to request to listen to an audio recording or to view a video recording made by a body camera or vehicle camera, and the law enforcement agency would be required to allow such listening or viewing subject to a reasonable fee. The persons who could make such a request would include the subject of the recording; a parent or legal guardian of a person under 18 years of age who is a subject of the

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recording; an attorney for any of the previous persons listed; and an heir-at-law, an executor, or an administrator of a decedent who is a subject of the recording.

The bill would define “body camera” and “vehicle camera.”

Finally, the bill would amend the existing definition of “criminal investigation records” in KORA to accommodate the new law.

### ***KORA Definitions***

The bill would amend the definition of “public record” to clarify that the specified recorded information would fall under the definition regardless of the location of the information. The bill also would add to this definition any recorded information that is made, maintained, kept by, or is in the possession of any officer or employee of a public agency pursuant to the officer’s or employee’s official duties, and is related to the functions, activities, programs, or operations of any public agency.

The bill would specify that the definition of “private person” used in defining records that are not public shall not include an officer or employee of a public agency who is acting pursuant to the officer’s or employee’s official duties.

The bill also would remove “officer” from the definition of “public agency” and would no longer exempt from this definition officers or employees of the State or localities who have their offices open to the public fewer than 35 hours a week.

Finally, the bill would make additional technical and non-substantive structural changes.

### ***Kansas Open Records Act Exceptions Review***

The bill would continue in existence until July 1, 2021, the following exceptions to KORA:

- KSA 2015 Supp. 40-955, concerning insurance rate filings;
- KSA 2015 Supp. 45-221(a)(10)(F), concerning victims of sexual offenses;
- KSA 2015 Supp. 45-221(a)(50), concerning information provided to 911 Coordinating Council;
- KSA 2015 Supp. 65-4a05, concerning individual identification present in documents related to licensing of abortion clinics;
- KSA 2015 Supp. 65-445(g), concerning child sexual abuse reports;
- KSA 2015 Supp. 9-513c, concerning licensing persons engaged in money transmission;
- KSA 2015 Supp. 12-5374, concerning emergency communications services;
- KSA 2015 Supp. 16-335, concerning cemetery corporations investigations;
- KSA 2015 Supp. 17-1312e, concerning investigations of cemetery corporations;
- KSA 2015 Supp. 25-2309, concerning voter registration documents;
- KSA 2015 Supp. 40-2,118, concerning fraudulent insurance acts;
- KSA 2015 Supp. 40-2,118a, concerning fraudulent insurance acts;

- KSA 2015 Supp. 40-4913, concerning termination of certain business relationships;
- KSA 2015 Supp. 75-5664, concerning the Advisory Committee on Trauma;
- KSA 2015 Supp. 75-5665, concerning the Regional Trauma Council;
- KSA 2015 Supp. 12-5611, concerning the Topeka/Shawnee County Riverfront Authority;
- KSA 2015 Supp. 22-4906, concerning criminal offender registration;
- KSA 2015 Supp. 22-4909, concerning criminal offender registration;
- KSA 2015 Supp. 38-2310, concerning records concerning certain juveniles;
- KSA 2015 Supp. 38-2311, concerning juvenile treatment records;
- KSA 2015 Supp. 38-2326, concerning juvenile offender information systems;
- KSA 2015 Supp. 44-1132, concerning discrimination in employment;
- KSA 2015 Supp. 60-3333, concerning environmental audit reports;
- KSA 2015 Supp. 65-6154, concerning emergency medical services reports;
- KSA 2015 Supp. 71-218, concerning community colleges and employee evaluation documents;
- KSA 2015 Supp. 75-457, concerning substitute mailing addresses;

- KSA 2015 Supp. 75-712c, concerning reports of missing persons;
- KSA 2015 Supp. 75-723, concerning the Abuse, Neglect, and Exploitation of Persons Unit in the Office of the Attorney General; and
- KSA 2015 Supp. 75-7c06, concerning concealed firearm records.

The bill would remove an exception concerning audits of voice over internet protocol (VoIP) providers, as the underlying statute, KSA 12-5358, was repealed during the 2011 Session.

#### ***Release of Charitable Gaming Information***

The bill also would amend a statute allowing the Secretary of Revenue or the Secretary's designee to release or publish certain charitable gaming information obtained in bingo licensee and registration applications and renewals pursuant to the Bingo Act. The applications from which such information may be drawn would be expanded to include any charitable gaming application and the reference to the Bingo Act would be updated to reference the Kansas Charitable Gaming Act.

#### **Conference Committee Action**

The Conference Committee agreed to remove the contents of Sub. for SB 22, regarding municipal court assessments, expungement orders, and notices of dismissal, conviction, or acquittal.

The Conference Committee then agreed to add the contents of:

- House Sub. for Sub. for SB 18, regarding law enforcement recordings from body cameras and vehicle cameras, with additional language allowing an heir-at-law, an executor, or an administrator of a decedent who is a subject of the recording to view a recording;
- SB 361, as passed by the Senate, regarding KORA definitions; and
- SB 415, as amended by the House Committee on Judiciary, regarding KORA exceptions review and release of charitable gaming information.

## **Background**

SB 22 was introduced by the Senate Committee on Judiciary at the request of the Kansas Judicial Council. As introduced, the bill contained provisions regarding certified copies of expungements and notices of conviction, dismissal, or acquittal in municipal courts. None of these provisions, the provisions of the substitute bill (which updated language to incorporate 2015 enactments), or the provisions added in the House Committee amendments are contained in the Conference Committee report.

### ***House Sub. for Sub. for SB 18 Background***

SB 18 was introduced by the 2015 Senate Committee on Judiciary at the request of Senator Haley. As introduced, the bill would have required every state, county, and municipal law enforcement officer primarily assigned to patrol duties to be equipped with a body camera. The bill would have set forth requirements for the operation of the body cameras and for the review and retention of the recordings produced by the cameras. Finally, the bill would have exempted the recordings from release under KORA and would have established a presumption that would take effect

upon a law enforcement agency's inability to produce a recording.

In the 2015 hearing by the Senate Committee on Corrections and Juvenile Justice, Senator Haley, Representative Finney, and representatives of the Racial Profiling Advisory Board of Wichita, American Civil Liberties Union of Kansas, Sunflower Community Action, and NAACP of Kansas testified in support of the bill. Representative Victors, legislator members of the Kansas African-American Legislative Caucus, former Representative Melody McCray-Miller, and representatives of Kansas Justice Advocate, Occupy Wichita, Peace and Social Justice Center of South Central Kansas, the Kansas African American Affairs Commission, and the Racial Profiling Citizens Advisory Board submitted written testimony supporting the bill.

Representatives of the Lenexa Police Department, Kansas Highway Patrol, and Kansas League of Municipalities, as well as a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association, testified in opposition to the bill. The Johnson County Sheriff and the Chief of Police of Arkansas City, as well as representatives of the cities of Shawnee, Wichita, Overland Park, and Concordia, submitted written testimony opposing the bill.

The Senate Committee adopted a substitute bill containing only a modified version of the KORA provision from the original bill.

At the request of Representative Barker, the Kansas Judicial Council conducted a study of Sub. for SB 18 during the 2015 Interim. The Judicial Council recommended the bill language be modified to treat police body camera recordings as criminal investigation records for the purposes of KORA.

The 2016 House Committee on Judiciary held a hearing on the bill and the Judicial Council's recommendation. At the hearing, a law professor; representatives of the Kansas

Association of Broadcasters, Kansas Press Association, and League of Kansas Municipalities; and a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association testified in favor of the Judicial Council recommendation. A representative of the City of Overland Park provided written testimony supporting the substitute bill and the Judicial Council recommendations. A representative of the American Civil Liberties Union of Kansas testified in opposition to the substitute bill.

The House Committee recommended a House substitute bill based upon the Judicial Council recommendation.

According to the 2015 fiscal note prepared by the Division of the Budget on the original bill, the Kansas Highway Patrol estimated additional expenditures of \$1,435,000 in FY 2016 and \$871,000 in FY 2017 would be needed. These amounts would be required for equipment, training, and salaries and wages for an additional 1.00 Administrative Specialist FTE position.

The League of Kansas Municipalities and the Kansas Association of Counties indicated the wide range of costs for equipment; storing, reviewing, and deleting recordings; and requests for copies to be made and sent out make it impossible to provide an accurate fiscal effect on local governments until they operate under the bill's provisions.

The Office of Judicial Administration indicated the original bill's provisions would provide additional factors to consider within existing cases, which could increase the amount of time spent on cases in district and appellate courts. The bill would not affect Judicial Branch revenues unless it causes additional appeals to be filed. The Judicial Branch cannot provide an accurate estimate of the fiscal effect until it has operated under the bill's provisions. Any fiscal effect was not reflected in *The FY 2016 Governor's Budget Report*.



No fiscal note was available for the substitute bill or for the House substitute bill at the time of Conference Committee consideration of Sub. for SB 22.

### ***SB 361 Background***

SB 361 was introduced by the Senate Committee on Judiciary at the request of Senator Baumgardner. At the hearing before the Committee, proponents testifying in support of the bill included Kansas Attorney General Derek Schmidt; Senator Baumgardner; Senator Hensley; representatives of the Kansas Association of Broadcasters, Kansas Press Association, and Kansas Association of Counties; and a private citizen. Providing written testimony in support of the bill were representatives of the Kansas Judicial Council and the League of Kansas Municipalities. No opponent or neutral testimony was presented.

The Senate Committee amended the bill to adjust the phrasing of the addition to the definition of “public record” of records of officers or employees of a public agency. The Senate Committee also amended the bill to clarify the term “private person.” These amendments would be retained in the Conference Committee report.

According to the fiscal note prepared by the Division of the Budget on SB 361, as introduced, the Office of Attorney General (Office) states there could be legal challenges by officers or employees who are required to produce records under the bill, requiring expenses of approximately \$10,000. The Office indicates these could be handled by existing staff. The Office also indicates an increased number of phone calls and requests for opinions and training may result from the passage of the bill, and if these requests exceed the current workload capacity of the Office, it may be necessary to hire additional attorneys. Finally, the Office expects an increase in KORA complaints if the bill is passed, but the fiscal effect of such an increase is difficult to estimate with any precision.

Any fiscal effect associated with the bill is not reflected in *The FY 2017 Governor's Budget Report*.

### ***SB 415 Background***

As introduced, SB 415 contained provisions continuing certain KORA exceptions indefinitely. A sunset provision for all KORA exceptions was added in 2000, requiring a review of exceptions within five years or they would expire. The law also required any exceptions continued after legislative review to be reviewed again five years later. More recently, 2013 HB 2012 modified the review requirement so that exceptions will no longer be subject to review and expiration if the Legislature reviews and continues the exception during the 2013 Session or thereafter. (Note: as described below, the House Committee added a sunset date of July 1, 2021, to the exceptions reviewed in this bill.)

In the Senate Committee on Judiciary, written testimony in support of the bill was submitted by the Kansas Department of Health and Environment, the Kansas Emergency Medical Services Association, and the Kansas State Nurses Association.

No conferees testified in the hearing before the House Committee on Judiciary. A representative of State Farm Insurance Companies submitted written testimony supporting the bill. The House Committee amended the bill to add a sunset date of July 1, 2021, to each of the KORA exceptions in the bill. The House Committee also added the provisions of HB 2484, regarding release of charitable gaming information. Further background regarding HB 2484 is included below. These amendments would be retained in the Conference Committee report.

The fiscal note prepared by the Division of the Budget indicates enactment of SB 415, as introduced, would have no fiscal effect on state revenues or expenditures.

### ***HB 2484 Background***

The 2015 Legislature enacted Sub. for HB 2155, which repealed the Bingo Act and created the Kansas Charitable Gaming Act, regulating bingo and raffles.

HB 2484 was introduced by the House Committee on Federal and State Affairs at the request of Representative Hineman. At the hearing before the House Committee, the Kansas Department of Revenue testified in support of the bill. There were no opposing or neutral conferees on the bill.

According to the fiscal note prepared by the Division of the Budget on HB 2484, the Department of Revenue indicates the bill would have no fiscal effect.

Kansas Open Records Act; criminal investigation records; law enforcement; audio recordings; video recordings; body camera; vehicle camera; public records; private persons; open records exceptions review; charitable gaming information

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