

SESSION OF 2016

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR  
SUBSTITUTE FOR SENATE BILL NO. 18**

As Recommended by House Committee on  
Judiciary

**Brief\***

House Sub. for Sub. for SB 18 would create new law stating that 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 the Kansas Open Records Act (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 that would be 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 recording, and an attorney for any of the previous persons listed.

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

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

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

## **Background**

The bill 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 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 when the Committees took action.