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MEMORANDUM

To: Joint Committee on Corrections and Juvenile Justice Oversight

From: Jason Thompson, Senior Assistant Revisor of Statutes

Date: November 13, 2018

Subject: Committee request regarding officer-involved shootings

The Joint Committee briefly discussed the topic of “transparency and accountability following a police shooting” at its organizational meeting on May 2, 2018. The Joint Committee made a related requested for information about “allowing the county coroner, rather than the county or district attorney, to determine whether the shooting was justified.” This memorandum provides an overview of statutes pertaining to investigation and criminal liability when a law enforcement officer discharges a firearm, an incident commonly referred to as an officer-involved shooting.

There is currently no Kansas statute or other statewide requirements or procedures specifically addressing officer-involved shootings. A law enforcement agency may have internal investigation procedures and conduct their own review of an officer-involved shooting. Johnson County law enforcement agencies have formed the Johnson County Officer Involved Shooting Investigation Team (OISIT), comprised of representatives from various agencies, to investigate shootings and report to the Johnson County District Attorney. The Lawrence Chief of Police announced a 2018 agreement with the Johnson County Sheriff’s Office to conduct the investigation of any officer-involved shootings concerning Lawrence Police Department employees. Additionally, an agency may ask the Kansas Bureau of Investigation (KBI) to conduct an independent investigation of an officer-involved shooting. Under K.S.A. 75-712, the KBI conducts investigations at the direction of the Attorney General.

Whether investigated by a law enforcement agency or the KBI as discussed above, results of the investigation are referred to the appropriate county or district attorney—the county or district attorney of the county in which the shooting occurred—to determine whether criminal charges are filed. The county or district attorney has options for making this determination. The typical internal

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procedures for deciding whether to file criminal charges could be followed, including reviewing the results of the investigation provided to the attorney and requesting or conducting further investigation. Additionally, the county or district attorney could request an inquisition under K.S.A. 22-3101, requiring the court to issue subpoenas for witnesses and commanding the witnesses to appear and testify, and if the testimony “discloses probable cause to believe that a crime has been committed” the attorney could file criminal charges under K.S.A. 22-3103. I note that the Attorney General is given this same authority under K.S.A. 22-3101 and 22-3103. Alternatively, the county or district attorney could petition the chief judge of the judicial district to order a grand jury to be summoned under K.S.A. 22-3001(b), and the grand jury could issue an indictment under K.S.A. 22-3011. I note that a majority of the district judges in the judicial district could order a grand jury to be summoned under K.S.A. 22-3001(a) “when it is determined to be in the public interest” and a citizen could require the district court to summon a grand jury under K.S.A. 22-3001(c) by submitting a petition to the court.

With respect to a coroner’s potential role, a district coroner receives notice of certain deaths under K.S.A. 22a-231 and is required to decide if an investigation shall take place. The investigation “may include, but is not limited to, obtaining medical and law enforcement background information, examination of the scene of the cause of death, inquest, autopsy, and other duties required of the coroner.” K.S.A. 22a-230 authorizes the coroner to “hold an inquest upon the dead bodies of such persons whose deaths appear to have been caused by unlawful means when the circumstances relating to such deaths are unknown.” To conduct an inquest the coroner is required to summon a jury of six residents of the county in which the death occurred for the purpose of inquiring into the cause of death. The jurors shall return their inquisition to the coroner and if the inquisition finds a crime has been committed on the deceased the coroner may order an arrest or issue a warrant. I note that K.S.A. 22a-226(a) establishes the office of district coroner in each judicial district and requires the coroner to be a resident of Kansas licensed to practice medicine and surgery by the state board of healing arts, or a resident of a military or other federal enclave within the state and duly licensed to practice medicine and surgery within such enclave. K.S.A. 22a-226(b) requires the county commissioners of a single-county judicial district or the county commissioners of the county with the largest population in multiple-county judicial districts to appoint a district coroner for the district.