

SESSION OF 2018

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 180**

As Agreed to April 30, 2018

Brief*

SB 180 would create and amend law regarding records related to law enforcement officers.

***Disclosure of Files Related to Previous Law Enforcement
or Government Employment***

The bill would create a process for disclosure of a law enforcement officer applicant's files if the applicant has been employed by another state or local law enforcement agency or governmental agency. For these purposes, "files" would be defined as all performance reviews or other files related to job performance, commendations, administrative files, grievances, previous personnel applications, personnel-related claims, disciplinary actions, internal investigation files, suspensions, investigation-related leave, documents concerning termination or other departure from employment, all complaints, and all early warning information. "Early warning information" would be defined as information from a data-based management tool designed to identify officers who may be exhibiting precursors of problems on the job that can result in providing those officers with counseling or training to divert them from conduct that may become a disciplinary matter. The bill also would define other key terms.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

When interviewing an applicant who has been employed by another agency for a law enforcement officer position, hiring agencies would require such applicant to execute a written waiver that explicitly authorizes each agency that has employed the applicant to disclose the applicant's files to the hiring agency and releases the hiring agency and each agency that employed the applicant from any liability related to the use and disclosure of the files. An applicant who refuses to execute the waiver would not be considered by the hiring agency. A copy of the waiver would be provided to each agency along with the request for information.

The bill would require the agency to disclose the files to the hiring agency within 21 days of receiving the request either by providing copies to the hiring agency or allowing the hiring agency to review the files at the agency's office. The bill would establish an exception if the agency is prohibited from providing the files pursuant to a binding nondisclosure agreement executed before July 1, 2018, to which such agency is a party. Agencies would be required to disclose an applicant's files, however, if such files are subject to a binding nondisclosure agreement executed on or after July 1, 2018, but the bill would limit disclosure to only those files necessary to determine an applicant's qualifications and fitness for performance of a law enforcement officer's duties. Further, the bill would allow agencies to redact personally identifiable information of persons other than the applicant in files disclosed. The bill states an agency would not be liable for complying with the provisions of this section in good faith or participating in an official oral interview with an investigator regarding the applicant.

The bill would prohibit disclosure of the files by the hiring agency, except as necessary for such agency's internal hiring processes; states the files would constitute a record of the agency that made, maintained, or kept the files, for the purposes of the Kansas Open Records Act (KORA); and would not be subject to a KORA request directed toward the hiring agency. Except in a civil action involving negligent hiring, the files would not be subject to discovery, subpoena,

or other process directed toward the hiring agency obtaining the files. The bill would add a provision to KORA to specify a request for records defined by the bill as “files” that were submitted to an agency would be directed to the agency that made, maintained, or kept such files.

Central Registry Records

The bill would amend the section of the Kansas Law Enforcement Training Act (Act) related to the central registry of Kansas police officers and law enforcement officers, as follows.

The bill would specify the registry is to include all records received or created by the Kansas Commission on Peace Officers’ Standards and Training (CPOST) pursuant to this section and all records related to violations of the Act, including records of complaints received or maintained by CPOST.

The bill would remove language stating the registry shall be made available only to agencies that appoint or elect police or law enforcement officers and would add provisions governing disclosure of records in the registry, as follows.

All records in the registry would be confidential and not subject to disclosure pursuant to KORA, except that records contained in the registry, other than investigative files, would have to be disclosed:

- To an agency that certifies, appoints, or elects police or law enforcement officers;
- To the person who is the subject of the information, but CPOST may require disclosure in a manner to prevent identification of any other person who is the subject or source of the information;

- In any proceeding conducted by CPOST in accordance with the Kansas Administrative Procedure Act (KAPA), in an appeal from such proceeding, or to a party or party's attorney in such proceeding;
- To a municipal, state, or federal licensing, regulatory, or enforcement agency with jurisdiction over acts or conduct similar to acts or conduct that would constitute grounds for action under the Act; or
- To the director of police training of the Law Enforcement Training Center when such disclosure is relevant to the director's pretraining evaluation of applicants for admission.

Additionally, the following records could be disclosed to any person pursuant to KORA:

- A record containing only a police or law enforcement officer's name, the name of a police or law enforcement officer's current employer, the police or law enforcement officer's dates of employment with the police or law enforcement officer's current employer, the name of previous law enforcement employers and the dates of employment with each each employer, a summary of the trainings completed by the police or law enforcement officer as reported to CPOST, and the status of the police or law enforcement officer's certification under the Act; and
- Statewide summary data without personally identifiable information.

The bill would provide that KORA exceptions would apply to any records disclosed under the above provisions.

Finally, the bill would specify that records could be disclosed as provided in KAPA.

The confidentiality provision and disclosure exceptions created by the bill would expire on July 1, 2023, unless the Legislature reviews and reenacts the provision prior to July 1, 2023.

Conference Committee Action

The Conference Committee agreed to the language of SB 180, as amended by the House Committee on Judiciary, regarding disclosure of files related to previous law enforcement or government employment, with one modification allowing certain disclosure in a civil action involving negligent hiring.

The Conference Committee further agreed to add the contents of HB 2625, as amended by the House Committee, regarding central registry records.

Background

SB 180 was introduced by the Senate Committee on Judiciary at the request of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association. The bill first received a hearing before the Senate Committee on Judiciary in the 2017 Legislative Session. At that hearing, a representative of those organizations and a representative of the Kansas Association of Counties appeared in support of the bill. A representative of the League of Kansas Municipalities (LKM) provided neutral testimony and offered suggestions for amendments to the bill. No other testimony was provided.

The Senate Committee modified the language of SB 180 pursuant to an amendment agreed to by the conferees and added this modified language to HB 2069. The amendment

would change “candidate” to “applicant,” add provisions applicable to files subject to a binding nondisclosure agreement executed on or after July 1, 2017, allow agencies to redact personally identifiable information of persons other than the applicant in files disclosed, modify the definition of “files” and “hiring agency,” add a definition for “early warning information,” and add a section to KORA concerning requests for records defined under the bill as “files.”

HB 2069, as amended by the Senate Committee on Judiciary, was added to HB 2054 in a 2017 Conference Committee but without the modified contents of SB 180.

During the 2018 Legislative Session, staff of the Office of Revisor of Statutes gave a briefing of the bill and its history to the Senate Committee on Judiciary and provided a copy of the amendment previously adopted with updated references to 2018 instead of 2017. The Kansas Association of Chiefs of Police, LKM, Kansas Peace Officers Association, and Kansas Sheriffs’ Association provided written testimony in support of the bill with the proposed amendment. Written testimony was also provided by the Kansas Press Association, Kansas Association of Broadcasters, and Kansas Sunshine Coalition for Open Government who were neutral on the bill with the proposed amendment, but opposed the section that would make the files obtained a record of the agency that made, maintained, or kept the files for the purposes of KORA.

The Senate Committee adopted the proposed amendment. [Note: This amendment was retained by the Conference Committee.]

In the House Committee on Judiciary hearing, representatives of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs’ Association and the LKM provided written-only testimony in support of the bill.

The House Committee amended the bill to change the effective date to publication in the *Kansas Register*. [Note:

This amendment was not retained by the Conference Committee.]

According to the fiscal note prepared by the Division of the Budget, the Attorney General and the Kansas Commission on Peace Officers' Standards and Training indicate enactment of SB 180, as introduced, would have no fiscal effect.

HB 2625 (Central Registry Records)

Introduced in 2017, HB 2070 would have amended the registry statute to classify reports to the registry as personnel records not required to be disclosed under KORA and to classify complaints or related documents received or maintained by CPOST as criminal investigation records under KORA and not required to be disclosed except under the provisions for disclosure of such records. HB 2070 passed the House and was referred to the Senate Judiciary Committee for hearing.

Following the 2017 Session, Representative Finch requested the Judicial Council study HB 2070. In December 2017, the Judicial Council's Criminal Law Advisory Committee published a report summarizing its study, recommending against enactment of HB 2070, and setting forth recommended language for amendment of the registry statute. The report also included a minority statement by an *ad hoc* member of the advisory committee expressing concerns about the recommendation.

HB 2625 was introduced by the House Committee on Judiciary at the request of Representative Whitmer. As introduced, the language of the bill was based upon the Judicial Council's recommendation.

In the House Committee on Corrections and Juvenile Justice hearing, representatives of CPOST and the Johnson County Sheriff's Office testified in support of the bill. Written-

only proponent testimony was provided by the Director of the Kansas Bureau of Investigation; representatives of the Fairway Police Department, Kansas Highway Patrol, and Judicial Council; and a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association.

A representative of the LKM testified as a neutral conferee. A representative of a member of the Judicial Council advisory committee testified in opposition to the bill, noting concerns from the minority statement in the Judicial Council's report.

The House Committee amended HB 2625 to specify records could be disclosed as provided in KAPA; exclude investigative files from required disclosure; strike provisions for disclosure of records that are covered by disclosure provisions in current law; and make technical changes to ensure consistent statutory phrasing and punctuation.

According to the fiscal note prepared by the Division of the Budget on HB 2625, as introduced, CPOST indicates enactment of the bill could cause a reduction to the number of requests for registry records but is not expected to have a fiscal effect.

law enforcement; disclosure of files related to previous employment; Kansas Law Enforcement Training Act; central registry of police officers and law enforcement officers; Commission on Peace Officers' Standards and Training; Kansas Open Records Act

ccrb_sb180_01_0000.odt