

SESSION OF 2018

**CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE SUBSTITUTE FOR SENATE BILL NO. 336**

As Agreed to April 26, 2018

**Brief\***

House Sub. for SB 336 would amend various law related to public records, as follows.

***Disclosure of Information Under the Revised Kansas Code for Care of Children***

The bill would amend the statute in the Revised Kansas Code for Care of Children (CINC Code) governing access to information concerning a child alleged or adjudicated to be in need of care and child fatalities.

A provision allowing a court to order disclosure of confidential agency records if such records are necessary for the proceedings of the court and are otherwise admissible as evidence would be amended to remove the requirement that such records be admissible as evidence.

Provisions requiring disclosure, pursuant to the Kansas Open Records Act (KORA), of records or reports related to a child fatality or near fatality resulting from child abuse or neglect, but allowing for the filing of a motion with a court by the Secretary for Children and Families (Secretary) or any affected individual to prevent disclosure of such records, would be amended to require notice of the filing of such motion to all parties requesting the records or report and

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provide such parties with the right to request and receive a hearing prior to the entry of an order on the motion. The bill would add the “public’s interest in the disclosure of such records or reports” to the factors the court must consider when ruling on the motion.

The bill would add a provision requiring the Secretary, as allowed by applicable law, to release the following information when child abuse or neglect results in a child fatality and a request is made under KORA, within seven business days of receipt of such request:

- Age and sex of the child;
- Date of the fatality;
- A summary of any previous reports of abuse or neglect received by the Secretary involving the child, along with the findings of such reports; and
- Any Department for Children and Families (DCF)-recommended services provided to the child.

The bill would add a similar provision requiring the Secretary, as allowed by applicable law, to release the following information when a child fatality occurs while the child was in the custody of the Secretary and a request is made under KORA, within seven business days of receipt of such request:

- Age and sex of the child;
- Date of the fatality; and
- A summary of the facts surrounding the death of the child.

### ***Disclosure of Law Enforcement Audio or Video Recordings***

The bill would amend the statute governing disclosure of audio or video recordings made and retained by law enforcement using a body camera or a vehicle camera (law enforcement recordings), as follows.

Under current law, the statute allows, in addition to any disclosure authorized under KORA, certain persons to request to listen to or view law enforcement recordings and requires the law enforcement agency to allow such listening or viewing. The bill would add a provision requiring the agency to allow the listening or viewing within 20 days after the request is made.

Under current law, an “heir at law” is one of the persons who may make the request. The bill would add the attorney for an heir at law to the list of persons who may make the request. The bill also would add a definition for “heir at law” to include an executor or an administrator of a decedent; the spouse of a decedent, if living; if there is no living spouse of a decedent, an adult child of a decedent, if living; or, if there is no living spouse or adult child of a decedent, a parent of a decedent, if living. (*Note:* Under current law, an executor or administrator of a decedent may make a request, so the bill only changes the organization, not the substance, of the law allowing these persons to make a request.)

In the list of requesters, the bill would change “a parent or legal guardian of a person under 18 years of age who is a subject of the recording” to “any parent or legal guardian of a person under 18 years of age who is a subject of the recording.”

The bill would clarify that requests to listen to or view a law enforcement recording are to be made in accordance with procedures adopted by public agencies pursuant to KORA requirements.

### ***Redaction of Social Security Numbers***

The bill would amend law related to the disclosure of personal information on public records to require the redaction of all portions of an individual's social security number on any document or record before it is made available for public inspection or copying. The provisions of the bill would not apply to documents recorded in the official records of any county recorder of deeds or in the official records of the courts.

The bill also would require an agency to:

- Give notice, as defined in the consumer information protection statutes, to any individual when the agency becomes aware of the unauthorized disclosure of the individual's personal information. Notice would be required to be given as expeditiously as possible and without unreasonable delay, while also considering the legitimate needs of law enforcement and any measures necessary to determine the scope of unauthorized disclosure;
- Offer to the affected individual credit monitoring services at no cost for one year;
- Provide all information necessary for the affected individual to enroll in such credit monitoring services; and
- Provide information to the affected individual on how a security freeze could be placed on the individual's consumer report.

### ***Continuation and Elimination of KORA Exceptions***

The bill would continue in existence the following exceptions to KORA:

- KSA 9-513c, concerning information or reports obtained and prepared by the State Bank Commissioner in the course of licensing or examining a person engaged in money transmission business (the bill would also remove an expiration provision in KSA 9-513c);
- KSA 39-709, concerning results of drug screenings administered under the cash assistance program;
- KSA 45-221(a)(26), concerning records of a utility or other public service pertaining to individually identifiable residential customers;
- KSA 45-221(a)(53), concerning records disclosing name or contact information for any person who is licensed to carry concealed handguns, enrolled in or completed any weapons training in order to be licensed, or has made application for such license under the Personal and Family Protection Act (PFPA);
- KSA 45-221(a)(54), concerning records of a utility related to cybersecurity threats, attacks, or general attempts to attack utility operations;
- KSA 65-6832 and KSA 65-6834, concerning protected health information;
- KSA 75-7c06, concerning records relating to licenses issued pursuant to the PFPA; and
- KSA 75-7c20, concerning security plans adopted to exempt a State or municipal building from law stating the carrying of a concealed handgun shall not be prohibited in any public area of any State or municipal building.

The bill would amend three statutes within the Viatical Settlements Act of 2002 that were reviewed and continued in 2013 to remove specific expiration provisions.

The bill would remove an exception preventing the disclosure of the name of any voter who has cast a ballot from the time the ballot is cast until the final canvass of the election by the county board of canvassers.

### ***Technical Changes***

The bill would update references to the Secretary, phrasing, and statutory references to ensure statutory consistency.

### **Conference Committee Action**

The Conference Committee agreed to the provisions of House Sub. for SB 336, as recommended by the House Committee on Judiciary, regarding disclosure of information under the CINC Code and KORA exceptions. The Conference Committee further agreed to add to the bill:

- HB 2571, as amended by Senate Committee on Judiciary, regarding disclosure of law enforcement recordings; and
- HB 2700, as amended by House Committee of the Whole, regarding redaction of social security numbers.

### **Background**

#### ***House Sub. for SB 336***

As introduced by the Senate Committee on Judiciary, passed by the Senate, and heard by the House Committee

on Judiciary, SB 336 contained provisions that would provide compensation for persons who have been wrongfully convicted and imprisoned.

The House Committee on Judiciary recommended a substitute bill for SB 336, replacing its contents, as passed by the Senate, with language modified from HB 2728, regarding disclosure of information under the CINC Code, and language modified from SB 295, regarding KORA exceptions. Further background information for HB 2728 and SB 295 is provided below.

There is no fiscal note available on the House Sub. for SB 336. However, fiscal note information for HB 2728 and SB 295 is provided below.

#### *HB 2728 (Disclosure of Information under the CINC Code)*

HB 2728 was introduced by the House Committee on Judiciary at the request of Representative Humphries on behalf of DCF. As introduced, the bill contained the provision requiring disclosure of certain information in the event that child abuse or neglect results in a child fatality.

In the House Committee hearing, the Acting Secretary for Children and Families and representatives of the Kansas Press Association and Kansas Sunshine Coalition for Open Government testified in support of the bill. A representative of the Kansas Association of Broadcasters submitted written-only proponent testimony. The attorney for the family of Evan Brewer submitted written-only opponent testimony.

The House Committee made the following modifications to the language of HB 2728 while placing it into House Sub. for SB 336:

- Removed an existing requirement that records be otherwise admissible as evidence for a court to order disclosure;

- Added the notice and hearing provisions and consideration of the public's interest in disclosure;
- Added the provision requiring release of certain information when a child fatality occurs when a child is in the custody of the Secretary; and
- Added a requirement that release under the new provisions be made within seven business days of receipt of the request.

According to the fiscal note prepared by the Division of the Budget on HB 2728, as introduced, DCF indicates enactment of HB 2728 would have no fiscal effect on agency operations.

#### *SB 295 (KORA Exceptions)*

A sunset provision for all exceptions to KORA was added in 2000, requiring a review of existing exceptions within five years and of any new exception or substantial amendment to an exception by July 1 of the fifth year after enactment. Absent such review, they would expire. The law also required any exceptions continued after legislative review to be reviewed again five years later; however, 2013 HB 2012 modified the requirement so that exceptions would no longer be subject to review and expiration if the Legislature reviews and continues the exception during the 2013 Session or thereafter.

In the Senate Committee on Judiciary hearing, staff presented an overview of SB 295. A representative of the League of Kansas Municipalities (LKM) appeared as a proponent of the bill. No other testimony was presented.

The House Committee on Judiciary held an informational hearing on the contents of SB 295 and placed language modified from SB 295 into House Sub. for SB 336.

The language was modified to remove, rather than continue, an exception regarding certain voter information.

According to the fiscal note prepared by the Division of the Budget on SB 295, as introduced, the Insurance Department and Office of the State Bank Commissioner indicate enactment of the bill would have no fiscal effect.

### ***HB 2571 (Disclosure of Law Enforcement Recordings)***

HB 2571 was introduced by Representative Alcala. As introduced, the bill would also have amended KORA provisions regarding copying fees, records maintained on computer facilities, and criminal investigation records, and would have set forth additional requirements for disclosure, redaction, and public inspection and copying of law enforcement recordings.

In the House Committee on Judiciary hearing, Representative Alcala, private citizens, and representatives of the Kansas Association of Broadcasters, Kansas Interfaith Action, Kansas Press Association, and Kansas Sunshine Coalition for Open Government testified in support of the bill. Written-only proponent testimony was provided by private citizens.

A representative of the Kansas County and District Attorneys Association (KCDAA) testified as a neutral conferee.

Representatives of the Johnson County Sheriff's Office, Kansas Association of Chiefs of Police, Kansas Peace Officers Association, Kansas Sheriffs' Association, and LKM testified in opposition to the bill. Written-only opponent testimony was submitted by the Lenexa chief of police and representatives of the Kansas Association of Counties (KAC), Kansas State Lodge of the Fraternal Order of Police, and Office of the Attorney General.

The House Committee amended HB 2571 to remove all sections except the section amending the statute governing disclosure of law enforcement recordings. Within this section, the House Committee amended the bill to:

- Change the new time limit from 24 hours to 20 days;
- Change the definition of “heir at law” that would have been added by the bill, as introduced;
- Add an attorney for an heir at law as a person who may make a request; and
- Remove additional requirements for disclosure, redaction, and public inspection and copying of law enforcement recordings that would have been added by the bill, as introduced.

In the Senate Committee on Judiciary hearing, representatives of the Johnson County Sheriff’s Office, Kansas Association of Broadcasters, Kansas Association of Chiefs of Police, Kansas Peace Officers Association, Kansas Press Association, Kansas Sheriffs’ Association, Kansas State Lodge of the Fraternal Order of Police, and LKM submitted written-only testimony supporting the bill. A representative of the KCDAA submitted written-only neutral testimony. No opponent testimony was provided. [*Note:* Because the Senate Committee had previously heard SB 360, regarding similar subject matter, conferees on HB 2571 were asked to submit written-only testimony.]

The Senate Committee amended HB 2571 by clarifying the procedure for submitting a request.

According to the fiscal note prepared by the Division of the Budget on HB 2571, as introduced, the Kansas Bureau of Investigation indicates enactment of the bill would result in an increase in KORA requests, which would require it to hire for

1.00 attorney FTE position at an ongoing cost of \$100,855 beginning in FY 2019.

The Office of Judicial Administration indicates enactment of HB 2571 could increase the number of arguments brought before the court regarding law enforcement recordings, which could increase the amount of time spent on cases filed in district courts and the number of appeals related to offenders convicted using such recordings. However, the number of additional arguments and appeals that would be presented is unknown and the fiscal effect cannot be estimated.

The KAC indicates enactment of HB 2571 would increase expenditures of county law enforcement agencies because it would require additional employee labor and the purchasing and licensing of redaction software. However, because the number of cases and recordings that would require review is unknown, the fiscal effect cannot be estimated. The LKM indicates enactment of the bill would increase expenditures of local law enforcement agencies due to costs related to the storage of recordings; attorney time to review recordings for redaction; redaction equipment; staff time for recording review, maintenance, and recovery; and additional cybersecurity efforts to secure the data collected. However, because the number of cases and recordings that would require review is unknown, the fiscal effect cannot be estimated. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2019 Governor's Budget Report*.

### ***HB 2700 (Redaction of Social Security Numbers)***

HB 2700 was introduced by Representative Esau and referred to the House Committee on Government, Technology and Security. In the House Committee hearing, Representative Esau testified in support of the bill, stating the need to protect an individual's private information on forms that are available for public inspection or copying. Neutral testimony was provided by a representative of the Kansas Supreme Court, who stated concerns about the burden the

bill would create for court employees and individuals desiring access to court records. Written neutral testimony was submitted by the Governmental Ethics Commission. No opponent testimony was provided.

The House Committee of the Whole amended HB 2700 by adding a provision requiring agencies to give notice when an individual's information has been disclosed in violation of the bill, and also requiring agencies to provide credit monitoring services to individuals subjected to unauthorized disclosure.

The fiscal note for HB 2700, published following action by the House Committee, states enactment of the bill would require state agencies to ensure that any portion of an individual's social security number to be redacted from any documents that are made public, which would require additional staff time by agencies. However, any fiscal effect resulting from the additional staff time would be expected to be negligible.

Public Records; Revised Kansas Code for Care of Children; Disclosure of Information Regarding Child Fatalities or Near Fatalities; Kansas Open Records Act; Continuation of Exceptions; Disclosure of Audio or Video Recordings Made and Retained by Law Enforcement; Redaction of Social Security Numbers

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