

SENATE BILL No. 180

By Committee on Judiciary

2-10

1 AN ACT concerning law enforcement; relating to hiring practices and
2 consideration of prior employment records;

; open records act; amending K.S.A. 2016 Supp. 45-220
and repealing the existing section

3

4 *Be it enacted by the Legislature of the State of Kansas:*

New

5 Section 1. (a) A hiring agency shall require each candidate
6 interviewed by such agency for a law enforcement officer position who
7 has been employed by another state or local law enforcement agency or
8 governmental agency to execute a written waiver that: (1) Explicitly
9 authorizes each state or local law enforcement agency or governmental
10 agency that has employed the candidate to disclose the applicant's files to
11 the hiring agency; and (2) releases the hiring agency and each state or local
12 law enforcement agency or governmental agency that employed the
13 candidate from any liability related to the use and disclosure of the files. A
14 candidate who refuses to execute the written waiver shall not be
15 considered for employment by the hiring agency. The hiring agency shall
16 include the written waiver with each request for information submitted to a
17 state or local law enforcement agency or governmental agency that has
18 employed the candidate.

applicant

applicant

applicant

applicant's

An applicant

applicant

19 (b) Except as provided in subsection (c), a state or local law
20 enforcement agency or governmental agency that receives a written waiver
21 described in subsection (a) shall disclose the files to the hiring agency not
22 more than 21 days after such receipt. Such law enforcement agency or
23 governmental agency may choose to disclose the applicant's files by either:
24 (1) Providing copies to the hiring agency; or (2) allowing the hiring
25 agency to review the files at the law enforcement agency's office or
26 governmental agency's office.

applicant's

(1)

27 (c) A state or local law enforcement agency or governmental agency
28 is not required to disclose the files pursuant to subsection (b) if such
29 agency is prohibited from providing the files pursuant to a binding
30 nondisclosure agreement to which such agency is a party, and such
31 agreement was executed before July 1, 2017.

applicant's

32 (d) A state or local law enforcement agency or governmental agency
33 shall not be liable for complying with the provisions of this section in good
34 faith or participating in an official oral interview with an investigator
35 regarding the candidate.

applicant

36 (e) Files obtained pursuant to this section shall not be disclosed by

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(2) A state or local law enforcement agency or governmental agency is required to disclose the applicant's files pursuant to subsection (b) if such files are subject to a binding nondisclosure agreement to which such agency is a party, and such agreement was executed on or after July 1, 2017, but the disclosure shall be limited to files necessary to determine the qualifications and fitness of the applicant for performance of duties in a law enforcement officer position.
(3) A state or local law enforcement agency or governmental agency may redact personally identifiable information of persons other than the applicant in files disclosed to the hiring agency.

1 the hiring agency, except as necessary for such agency's internal hiring
2 processes.

3 (f) Files obtained pursuant to this section shall constitute, for the
4 purposes of the open records act, a record of the state or local law
5 enforcement agency or governmental agency that made, maintained or
6 kept such files. Such files shall not be subject to a request for inspection
7 and copying under the open records act directed toward the hiring agency
8 obtaining the files, and shall not be subject to discovery, subpoena or other
9 process directed toward the hiring agency obtaining the files. The official
10 custodian of such files, for the purposes of the open records act, shall be
11 the official custodian of the records of such state or local law enforcement
12 agency or governmental agency.

13 (g) As used in this section:

14 (1) "Files" means all performance reviews or other files related to job
15 performance, commendations, administrative files, grievances, previous
16 personnel applications, personnel-related claims, disciplinary actions,
17 internal investigation files, suspensions, investigation-related leave,
18 documents concerning termination or other departure from employment
19 ~~and all complaints or early warnings.~~ "Files" shall not include
20 nonperformance documents or data, including, but not limited to, medical
21 files, schedules, pay and benefit information or similar administrative data
22 or information.

, all complaints and all early warning information

"Early warning information" means 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 away from conduct that may become a disciplinary matter.

23 (2) "Governmental agency" means the state or subdivision of the state
24 with oversight of the state or local law enforcement agency.

25 (3) "Hiring agency" means a law enforcement agency processing an
26 application for employment, regardless of whether the applicant is
27 ultimately hired.

state or local

28 (4) "State or local law enforcement agency" means any public agency
29 employing a law enforcement officer as defined in K.S.A. 74-5602, and
30 amendments thereto.

Insert Attachment A
Renumber sections accordingly

31 Sec. 2. This act shall take effect and be in force from and after its
32 publication in the statute book.

Attachment A

Sec. 2. K.S.A. 2016 Supp. 45-220 is hereby amended to read as follows: 45-220. (a) Each public agency shall adopt procedures to be followed in requesting access to and obtaining copies of public records, which procedures shall provide full access to public records, protect public records from damage and disorganization, prevent excessive disruption of the agency's essential functions, provide assistance and information upon request and insure efficient and timely action in response to applications for inspection of public records.

(b) A public agency may require a written request for inspection of public records but shall not otherwise require a request to be made in any particular form. Except as otherwise provided by subsection (c), a public agency shall not require that a request contain more information than the requester's name and address and the information necessary to ascertain the records to which the requester desires access and the requester's right of access to the records. A public agency may require proof of identity of any person requesting access to a public record. No request shall be returned, delayed or denied because of any technicality unless it is impossible to determine the records to which the requester desires access.

(c) If access to public records of an agency or the purpose for which the records may be used is limited pursuant to K.S.A. 45-221 or K.S.A. 2016 Supp. 45-230, and amendments thereto, the agency may require a person requesting the records or information therein to provide written certification that:

(1) The requester has a right of access to the records and the basis of that right; or

(2) the requester does not intend to, and will not: (A) Use any list of names or addresses contained in or derived from the records or information for the purpose of selling or offering for sale any property or service to any person listed or to any person who resides at any address listed; or (B) sell, give or otherwise make available to any person any list of names or addresses contained in or derived from the records or information for the purpose of allowing that person to sell or offer for sale any property or service to any person listed or to any person who resides at any address listed.

(d) A public agency shall establish, for business days when it does not maintain regular office hours, reasonable hours when persons may inspect and obtain copies of the agency's records. The public agency may require that any person desiring to inspect or obtain copies of the agency's records during such hours so notify the agency, but such notice shall not be required to be in writing and shall not be required to be given more than 24 hours prior to the hours established for inspection and obtaining copies.

(e) Each official custodian of public records shall designate such persons as necessary to carry out the duties of custodian under this act and shall ensure that a custodian is available during regular business hours of the public agency to carry out such duties.

(f) Each public agency shall provide, upon request of any person, the following information:

(1) The principal office of the agency, its regular office hours and any additional hours established by the agency pursuant to subsection (c).

(2) The title and address of the official custodian of the agency's records and of any other custodian who is ordinarily available to act on requests made at the location where the information is displayed.

(3) The fees, if any, charged for access to or copies of the agency's records.

(4) The procedures to be followed in requesting access to and obtaining copies of the agency's records, including procedures for giving notice of a desire to inspect or obtain copies of records during hours established by the agency pursuant to subsection (c).

(g) ~~(1)~~ Except for requests of summary data compiled from information submitted by multiple criminal justice agencies or as otherwise provided by law, requests for records submitted to the central repository or any other repositories supporting the criminal justice information system which are maintained by the Kansas bureau of investigation pursuant to K.S.A. 22-4704 and 22-4705, and amendments thereto, shall be directed to the criminal justice agency from which the records originated.

~~(h)~~ (2) As used in this section ~~subsection~~, the terms "central repository," "criminal justice agency" and "criminal justice information system" have the same meanings as defined in K.S.A. 22-4701, and amendments thereto.

~~(h)~~ Requests for records defined as "files" pursuant to section 1, and amendments thereto, submitted to a state or local law enforcement agency or governmental agency shall be directed to the state or local law enforcement agency or governmental agency that made, maintained or kept such files, as required by section 1, and amendments thereto.

Sec. 3. K.S.A. 2016 Supp. 45-220 is hereby repealed.