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MEMORANDUM

To: Senate Committee on Judiciary
From: Jason Thompson, Senior Assistant Revisor of Statutes
Date: January 24, 2018
Subject: Bill Brief and Bill History for SB 180

SB 180 provides for law enforcement agencies to request and receive certain prior employment records concerning applicants previously employed by another state or local law enforcement agency or governmental entity.

The Committee had a hearing on SB 180 on March 8, 2017. Amendments were proposed and developed, and on March 23, 2017, the Committee adopted the amendments, added the amended bill contents to HB 2069, and passed HB 2069, as amended, out of the Committee. HB 2069 remained below the line in the Senate until May 08, 2017, when it was removed from the calendar and referred back to the Committee.

The proposed balloon amendment for SB 180, dated January 18, 2018, would amend the bill so that it is the same as what the Committee added to HB 2069 and passed out in 2017.

As presented in the proposed balloon amendment, subsection (a) of New Section 1 provides that a hiring agency – defined as a state or local law enforcement agency processing an application for employment, regardless of whether the applicant is ultimately hired – shall require each applicant interviewed by such agency for a law enforcement officer position who has been employed by another state or local law enforcement agency to execute a written waiver. An applicant who refuses to execute the written waiver shall not be considered for employment by the hiring agency. The hiring agency is then required to include the written waiver with each request for information submitted to an agency that has employed the applicant.

Subsection (b) provides that an agency that receives a written waiver shall disclose the files to the hiring agency not more than 21 days after such receipt. The term “files” means all performance reviews or other files related to job performance, commendations, administrative files, grievances, previous personnel applications, personnel-related claims, disciplinary actions,

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internal investigation files, suspensions, investigation-related leave, documents concerning termination or other departure from employment, all complaints and all early warning information. The agency may choose to disclose the applicant's files by either: (1) Providing copies to the hiring agency; or (2) allowing the hiring agency to review the files at the agency's office.

Subsection (c) provides an exception to the required disclosure if such agency is prohibited from providing the files pursuant to a binding nondisclosure agreement to which such agency is a party, and such agreement was executed before July 1, 2018. The agency will be required to disclose the applicant's files even 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, 2018, 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. The final provision of subsection (c) would allow an agency to redact personally identifiable information of persons other than the applicant in files disclosed to the hiring agency.

Subsection (d) provides that any agency shall not be liable for complying with the provisions of this law in good faith or participating in an official oral interview with an investigator regarding the applicant.

Subsection (e) provides that files obtained pursuant to this law shall not be disclosed by the hiring agency, except as necessary for such agency's internal hiring processes.

Subsection (f) provides that files obtained pursuant to this law shall constitute, for the purposes of the open records act, a record of the state or local law enforcement agency or governmental agency that made, maintained or kept such files. Such files shall not be subject to a request for inspection and copying under the open records act directed toward the hiring agency obtaining the files, and shall not be subject to discovery, subpoena or other process directed toward the hiring agency obtaining the files. The official custodian of such files, for the purposes of the open records act, shall be the official custodian of the records of such state or local law enforcement agency or governmental agency.

Subsection (g) provides definitions for the new section of law.

Finally, Section 2 amends K.S.A. 45-220, part of the Kansas open records act. A new subsection (h) provides that requests for records defined as "files" under Section 1, 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, rather than the hiring agency that acquired the records.