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300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

MEMORANDUM

To: Senate Committee on Judiciary

From: Jason Thompson, Senior Assistant Revisor of Statutes

Date: March 12, 2018

Subject: Bill Brief for HB 2571, as amended by House Committee

HB 2571, as amended, makes changes to K.S.A. 45-254, which is the statute governing disclosure of law enforcement recordings from body or vehicle cameras

Current law requires a law enforcement agency to allow certain persons listed in subsection (c) to listen to or view law enforcement recordings, which currently includes: (1) A subject of the recording; (2) a parent or legal guardian of a person under 18 who is a subject of the recording; (3) an attorney for such persons; or (4) an heir at law or executor of a decedent who is the subject of the recording. The bill amends subsection (c) to authorize requests by: (1) A subject of the recording; (2) any parent or legal guardian of a person under 18 who is a subject of the recording; (3) an heir at law when a decedent is a subject of the recording; and (4) an attorney for such persons.

The bill also requires a law enforcement agency to allow any of the persons listed in subsection (c) to listen to the requested audio recording or to view the requested video recording within 20 days after making a request. Finally, the bill defines “heir at law” on page 14, in line 16, to include an executor or administrator of a decedent and add: 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.

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| SB 360 | HB 2571, as introduced |
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| <p>Section 1. K.S.A. 45-219</p> <p>Subsection (a)</p> <ul style="list-style-type: none"> - Strikes language allowing public agencies to require written requests and prepayment of fees and replaces it with language that only allows agencies to require prepayment for copying fees - Mandatory copying of audio or visual records if the public agency has the necessary duplication equipment or if the audio or visual item was shown or played at a public meeting | <p>Section 1. K.S.A. 45-219</p> <p>Same</p> <p><u>(Section removed by House Committee)</u></p> |
| <p>N/A</p> | <p>Sec. 2. K.S.A. 45-221</p> <p><u>(Section removed by House Committee)</u></p> <p>Subsection (a)(10)</p> <ul style="list-style-type: none"> - Remove current law relating to disclosure of criminal investigation records, replace with language providing that a public agency shall not disclose criminal investigation records while the investigation is active <p>Subsection (h)(1)</p> <ul style="list-style-type: none"> - Case becomes inactive upon: (1) a decision by law enforcement to not pursue the case; (2) expiration of the time to bring a charge or 30 years after commission of the offense; or (3) exhaustion of or expiration of all rights of appeal by a person convicted on the basis of the records <p>Subsection (h)(2)</p> <ul style="list-style-type: none"> - Criminal investigation records related to an inactive investigation shall be disclosed unless disclosure would: (1) interfere with any prospective law enforcement action; (2) reveal the identity of a confidential source or undercover agent; (3) reveal confidential investigation techniques or procedures; (4) endanger the life or physical safety of a person; or (5) reveal information that specifically and individually identifies the victim of a sex offense |

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| | <p>Subsection (h)(3) - If a record is discretionarily closed, the record custodian shall provide a written citation to the provision that necessitates closure</p> <p>Subsection (h)(4) -Any audio or video recording made and retained by law enforcement using a body or vehicle camera that is part of an inactive investigation and that constitutes a clearly unwarranted invasion of personal privacy shall not be disclosed, but the existence of the recording shall be disclosed to any person requesting access to the file</p> <p>Subsection (h)(5) -A district court may order disclosure of any criminal investigation record if the court finds disclosure: (1) is in the public interest; (2) would not interfere with prospective law enforcement action; (3) would not reveal the identity of a confidential source or undercover agent; (4) would not reveal confidential investigative techniques; (5) would not endanger the life or physical safety of a person; and (6) would not reveal information that specifically and individually identifies the victim of a sex offense</p> |
| <p>Sec. 2. K.S.A. 45-254</p> <p>Subsection (b) - Law enforcement agency shall allow any of the persons listed in subsection (c) to listen to audio recording or view video recording within 24 hours after making the request</p> <p>Subsection (c) - Allows individual with a written release from the next of kin of a decedent who is the subject of the recording to make a request</p> <p>Subsection (d) - Require disclosure of law enforcement recordings within <u>30 days</u> after a request is made by any person, if the recording depicts or describes: (1) the discharge of a firearm by a</p> | <p>Sec. 3. K.S.A. 45-254</p> <p>Subsection (b) Same (<u>House Committee amended to 20 days</u>)</p> <p>Subsection (c) Same (<u>House Committee amended</u>)</p> <p>Subsection (d) Same, but required within <u>5 business days</u> after a request is made (<u>Subsection removed by House Committee</u>)</p> |

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law enforcement officer in the course of duty;
or (2) the use of force by a law enforcement
officer resulting in great bodily harm or death

Subsection (e)

- Require the law enforcement agency to redact or obscure certain portions of a recording, including a recording that: (1) depicts death or severe violence against a person, unless the death or act was caused by a law enforcement officer; (2) depicts nudity or sexual contact; (3) reveals the identity of a confidential source, undercover agent or confidential investigative techniques; (4) endangers the life or safety of any person; (5) reveals the identity of a victim of sexual offense or a minor; (6) includes confidential medical or personal information; or (7) reveals the name or license plate number of a person not arrested, cited or charged

- Requirement to redact or obscure shall not apply to requests made by any person described in subsection (c)

Subsection (f)

- Law enforcement agency may redact or obscure certain portions of recordings before disclosure that reveals the identity of a law enforcement officer who is subject to an ongoing internal investigation as a result of the events depicted in the recording

- Law enforcement agency shall not redact the identity of a law enforcement officer after the internal investigation has concluded or final disciplinary action has been rendered

- If the internal investigation lasts longer than 270 days, law enforcement recordings that were not disclosed, redacted or obscured under this section shall be made available for public inspection and copying

Subsection (g)

- Definition of “great bodily harm” and “heir at law”

Subsection (e)

Same

(Subsection removed by House Committee)

Subsection (f)

Same

(Subsection removed by House Committee)

Subsection (g)

No definition of “great bodily harm”;
same definition of “heir at law”

(House Committee amended)