



Kansas County & District Attorneys Association

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To: Chairman Wilborn and Members of the Senate Judiciary Committee
From: Kim Parker, Prosecutor Coordinator
Kansas County and District Attorneys Association
Date: March 12th, 2018
Re: Neutral Testimony for House Bill2571 as amended

Good Morning Chairman Wilborn and Committee Members,

Thank you for the opportunity to provide neutral testimony for HB2571. I am addressing you on behalf of the Kansas County and District Attorney's Association and the many Kansas prosecutors they represent.

Kansas prosecutors are obligated to protect and serve the public safety and public interest and as such understand and recognize the need for transparency in government and to keep the public informed. The ability of body and vehicle cameras to objectively memorialize interactions between police and citizens promises to provide many enhancements to the justice system. Public policy discussions regarding access to the video recordings must balance issues of cost, privacy and one's right to a fair trial.

HB2571 amends the Kansas Open Records Act with a focus on the video information contained on law enforcement body and vehicle cameras. Our interest in this amendment surrounds the need to ensure that criminal investigation records continue to be **excepted** and that the information contained in body or vehicle camera footage is included in that exception. This is necessary to protect the safety of our communities and ensure that criminally charged defendants receive a fair and just trial. This rises above all concerns, as it is the absolute right of an accused to receive a fair trial. Supreme Court Rule 3.6 unequivocally states that a lawyer "shall not" disseminate information that "will have a substantial likelihood of materially prejudicing an adjudicative proceeding." Rule 3.8 Special Responsibilities of a Prosecutor, states that "*except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, [shall] refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and [shall] exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extra judicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this rule.*"

A video, like a DNA report, is evidence. Public trials are where an accused, with counsel, confronts and challenges evidence –including video--he or she has previously been provided in discovery per Brady v. Maryland, 373 U.S. 83 (1963) and K.S.A. 22-3212.

If a carefully restrained release of a still photo or short video clip can ease community tension and add transparency without impacting the right to a fair trial, then “*a legitimate law enforcement purpose*” may be served (Rule 3.8). When appropriate, this approach can balance legitimate calls for transparency against the litany of Constitutional due process rights uniquely granted to criminal defendants: right to silence, double jeopardy, right to counsel, speedy trial, the presumption of innocence, *et cetera*. As policy makers wrestle with how to set access, law enforcement professionals must continue to follow the ethical rules and constraints long present in our law. Appellate courts will ultimately judge whether transparency can be achieved without sacrifice to fairness.

Anytime law enforcement is involved in the discharge of a firearm or use of force that causes great bodily harm or death, there is necessarily a **criminal investigation** which often extends over several days. An early release to any person of the video footage that is only a portion of the whole investigation could critically impede or impair the investigation and the ability to prosecute and protect the rights of a defendant to a fair trial.

Thank you for your consideration.

Kim T Parker
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