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TO: House Corrections and Juvenile Justice Committee

FROM: Kansas Judicial Council – Laura Nordgren

DATE: March 1, 2018

RE: Judicial Council Testimony on HB 2625 – Written Only

The Judicial Council supports House Bill 2625. The bill is based on the work product of the Judicial Council's Criminal Law Advisory Committee. The attached report provides the background on the study process that resulted in recommendations nearly identical to the substance of HB 2625, including how that bill differs from 2017 HB 2070.

**REPORT OF THE JUDICIAL COUNCIL
CRIMINAL LAW ADVISORY COMMITTEE
2017 H.B. 2070**

DECEMBER 21, 2017

On March 28, 2017, Representative Blaine Finch asked the Judicial Council to study 2017 H.B. 2070, which proposed to protect the central registry and investigatory records of the Kansas Commission on Peace Officers' Standards and Training (KSCPOST) from disclosure under the Kansas Open Records Act. The Judicial Council referred the study to the Criminal Law Advisory Committee in June, 2017.

COMMITTEE MEMBERSHIP

The members of the Judicial Council Criminal Law Advisory Committee are:

Stephen E. Robison, Chair, Member of Fleeson, Gooing, Coulson, & Kitch, LLC and Member of the Kansas Judicial Council; Wichita

Natalie Chalmers, Assistant Solicitor General; Topeka

Sal Intagliata, Member, Monnat & Spurrier, Chartered; Wichita

Ed Klumpp, Chief of Police-Retired, Topeka Police Department; Tecumseh

Patrick M. Lewis, Criminal Defense Attorney; Olathe

Steven L. Opat, Geary County Counselor; Junction City

Hon. Cheryl A. Rios, District Court Judge in the Third Judicial District; Topeka

John Settle, Senior Assistant District Attorney, Reno County; Hutchinson

Ann Swegle, Sedgwick County Deputy District Attorney; Wichita

Kirk Thompson, Director of Kansas Bureau of Investigation; Topeka

Rep. John Wheeler, District 123; Garden City

Ronald Wurtz, Retired Public Defender (Federal and Kansas); Topeka

Prof. Corey Rayburn Yung, KU School of Law Professor; Lawrence

Ad Hoc Members:

Doug Anstaett, Kansas Press Association; Topeka

Prof. Mike Kautsch, KU School of Law Professor; Lawrence

EXECUTIVE SUMMARY

The first section of H.B. 2070 amended K.S.A. 2016 Supp. 74-5611a to declare that the central registry maintained by the Kansas Commission on Peace Officer Standards and Training (KSCPOST) was not subject to disclosure under the Kansas Open Records Act (KORA). The second section of the bill created a new statute declaring any complaint or report, record or other information relating to a complaint which is received, obtained, created or maintained by KSCPOST as confidential and not subject to disclosure under KORA. The section also set out three specific circumstances when such records may be disclosed by KSCPOST.

The Committee agreed the records in KSCPOST's central registry, specifically, the "Notice of Termination or Status Change" form, should not be disclosed to the public. The Committee also agreed complaints about a law enforcement officer's conduct made directly to KSCPOST and any records of KSCPOST's investigation into the officer's conduct should also be confidential. Requiring KSCPOST to disclose all the information received from law enforcement agencies about an officer's separation from employment would go against the purpose of the registry, which is to be a resource for law enforcement agencies when considering an officer's application for employment. If all the information about the reason for a separation from employment on the "Notice of Termination or Status Change" form were available to the public, it might have a chilling effect on the amount of information law enforcement agencies put into the registry. Reducing the amount of information shared between law enforcement agencies would reduce the registry's effectiveness.

The Committee reviewed the statutes governing other state-level professional licensing entities and determined it would be consistent with other licensing entities to treat complaints and prehearing investigation records as confidential. If KSCPOST finds merit in the complaint, the information is available to the public during the officer's hearing and in KSCPOST's final written order. The Committee considered whether current KORA exemptions were sufficient to protect the complaints and investigatory records. While the KORA exemption for agency records for administrative adjudications would protect the complaint and investigation records during the certification action proceedings, no exemption would protect the complaint and investigation records from disclosure after the certification action proceedings ended.

The Committee agreed it is important for the public to be able to attend any hearing as well as access any summary orders, written agreements, final orders, records presented at the hearing for consideration by the Hearing Committee, and transcripts of the hearing related to action taken by KSCPOST against an officer's certification. KSCPOST already discloses these records pursuant to the Kansas Administrative Procedure Act; however, the Committee concluded it would be helpful for the statutes in the Law Enforcement Training Act to specifically list what may be disclosed to the public.

Therefore, the Committee recommends against the bill as originally proposed or as amended. Instead, the Committee recommends K.S.A. 2017 Supp. 74-5611a specify that all records related to violations of the Kansas Law Enforcement Training Act are part of the registry and are therefore confidential except as provided in the statute. The statute would also be amended to provide a list of what can be disclosed from the registry and to whom. The Committee's recommendations are below.

The Committee's recommendation was not unanimous. A statement explaining the minority viewpoint is provided on page 27 of this report.

RECOMMENDATION

The Committee recommends against the passage of H.B. 2070 in its original form or as amended. Rather than trying to specify which KORA exemptions KSCPOST could invoke, the Committee recommends the specific statute creating the registry, K.S.A. 2017 Supp. 74-5611a, be amended as follows. (Amendments to the statute are italicized and underlined.)

74-5611a. Central registry; purpose; required reports; immunity from liability

- (a) (1) The commission shall establish and maintain a central registry of all Kansas police officers or law enforcement officers.
- (2) The purpose of the registry is to be a resource for all agencies who appoint or elect police or law enforcement officers to use when reviewing employment applications of such officers. *The registry shall include all records received or created by the commission under this section and all records related to violations of the Kansas law*

enforcement training act, including but not limited to, records of complaints received or maintained by the commission.

(3) All records contained in the registry are confidential and shall not be disclosed, except such records may be disclosed:

(A) to an agency that certifies, appoints, or elects police or law enforcement officers;

(B) to the person who is the subject of the information, but the commission may require disclosure in such a manner as to prevent identification of any other person who is the subject or source of the information;

(C) in any proceeding conducted by the commission in accordance with the Kansas administrative procedure act or in an appeal of an order of the commission entered in a proceeding, or to a party in such proceeding or that party's attorney;

(D) to a municipal, state, or federal licensing, regulatory, or enforcement agency with jurisdiction over acts or conduct similar to acts or conduct which would constitute grounds for action under this act;

(E) to the director of police training when such disclosure is relevant to the exercise of the authority granted in K.S.A. 74-5604a(b), and amendments thereto; or

(F) to third persons if the disclosure contains:

(i) only the following information:

(a) a police or law enforcement officer's name;

(b) the name of a police or law enforcement officer's current employer;

(c) the police or law enforcement officer's dates of employment with the police or law enforcement officer's current employer;

(d) the name of previous law enforcement employers and the dates of employment with each employer;

- (e) a summary of the trainings completed by the police or law enforcement officer as reported to the commission;
 - (f) the status of the police or law enforcement officer's certification under this act; and
 - (g) statewide summary data without personally identifiable information;
 - (ii) any written order or agreement regarding the censure, reprimand, or the ordering of a condition, suspension, revocation, or denial of certification of a person as a police officer or law enforcement officer;
 - (iii) any records submitted during a hearing regarding the censure, reprimand, or the ordering of a condition, suspension, revocation, or denial of certification of a person as a police officer or law enforcement officer, to the commission or the commission's designated committee by the parties involved in the hearing; or
 - (iv) any written or electronic transcript of a hearing regarding the censure, reprimand, or the ordering of a condition, suspension, revocation, or denial of certification of a person as a police officer or law enforcement officer.
- (4) K.S.A. 45-221(a), and amendments thereto, shall apply to any records subject to subsection (a)(3).

The Committee recommends the registry be defined to include all the records received or created by KSCPOST related to the objectives laid out in K.S.A. 74-5611a and all records related to violations of the Kansas Law Enforcement Training Act. The Committee recommends the statute mirror the pattern of other licensing agency statutes and declare all records contained in the registry confidential and prohibit disclosure of such records except as set out in the statute. The registry would now include all complaints, investigation records, written order, transcripts of hearings, evidence officered in hearings, and transcripts of hearings. However, the Committee

does not intend for all these records to remain confidential. It recommends the statute specifically set out which records or information are available for disclosure. This is discussed below.

Subsection (a)(3)(A) maintains the purpose of the registry by allowing the records to be disclosed to Kansas or other state law enforcement agencies. The Committee chose to add that a disclosure could be made to an agency that “certifies” law enforcement officers, in order to allow KSCPOST to disclose records to another state’s law enforcement certifying agency that may request information when deciding whether to certify an individual who had formerly been certified here in Kansas. Subsection (a)(3)(B) allows the individual officer to access his or her own KSCPOST’s registry file. Subsection (a)(3)(C) allows the information in the registry to be disclosed as needed in any administrative proceeding conducted by KSCPOST.

Subsection (a)(3)(D) allows information in the registry to be disclosed to other licensing, regulatory, or enforcement agencies that may also need to know about an individual’s conduct. This provision will facilitate the exchange of information between such agencies. An officer’s conduct may have violated other rules and regulations outside of the Law Enforcement Training Act. Subsection (a)(3)(E) allows information in the registry to be disclosed to the director of police training who is require by K.S.A. 74-5604a(b) to evaluate applicants before they can be admitted to the law enforcement training program.

Subsection (a)(3)(F) defines what information from the registry can be disclosed to any member of the public. The Committee agreed that while the documents that provide KSCPOST with information contained in the registry should be confidential, KSCPOST should disclose certain information from those documents. KSCPOST should disclose the names of the officer’s past law enforcement employers and the dates the officer was employed by each employer so that the member of the public could then go to the specific agencies and request any information about the officer directly from the agency. KSCPOST would also disclose a summary of the trainings completed by the officer. An officer is required to complete at least 40 hours of training each year in order to maintain his or her certification. KSCPOST maintains a record of those completed training hours. If the officer completes additional hours of training, the officer may choose not to submit documentation of that training to KSCPOST. Therefore, the Committee included the phrase “as reported to the commission” in the proposed subsection (a)(3)(F)(i)(e) in

order to alert a requester that KSCPOST does not necessarily maintain a comprehensive list of the trainings completed by the officer.

The Committee recommends the inclusion of subsection (a)(3)(F)(i)(g) in order to allow KSCPOST to distribute statistical summary data that does not include any information that would identify individual officers. The Committee specified that it must be “statewide” summary data in order to prevent someone from obtaining the summary data at a local or county level. Since the majority of Kansas law enforcement agencies have 10 or fewer officers, it could be very easy to identify information about individual officers if KSCPOST released the information about a specific local law enforcement agency.

Subsection (a)(3)(F)(ii) allows KSCPOST to disclose any written order or agreement related to action taken by the commission against an officer’s certification. That would allow anyone to obtain documents such as a copy of KSCPOST’s Investigative Committee’s summary order, any consent agreement entered into between KSCPOST and the officer, and any final order issued by KSCPOST’s Hearing Committee. Subsection (a)(3)(F)(iii) allows anyone to access any records submitted as evidence by the parties to the Hearing Committee during a hearing. Subsection (a)(3)(F)(iv) allows KSCPOST to disclose any written or electronic transcript of a hearing before KSCPOST’s Hearing Committee. All hearings are already open to the public pursuant to K.S.A. 77-523(f).

Under the Kansas Open Records Act, K.S.A. 45-221(a), certain information is protected from disclosure unless another law allows the disclosure. Examples of the records K.S.A. 45-221(a) protects includes, individuals’ medical records, psychiatric records, social security numbers, employee performance ratings, information about the identity of an undercover agent, and an individual’s test scores. Subsection (a)(4) would make sure that the protections in K.S.A. 45-221(a) would still apply to any disclosures made by KSCPOST pursuant to the new K.S.A. 74-5611a(a)(3).

BACKGROUND

H.B. 2070 was introduced in the Kansas House of Representatives on January 18, 2017, and referred to the House Judiciary Committee. Proponents and opponents of the bill testified during the hearing before the House Committee on January 25, 2017. The proponents’ testimony

argued that the complaints, documents, and information received by KSCPOST about an officer's misconduct or separation from employment was intended to (1) serve as a resource for law enforcement agencies when hiring officers, and (2) alert KSCPOST to officer conduct that may require action against the officer's certification. KSCPOST was concerned that if the information it gathered from law enforcement agencies was available to the public, law enforcement agencies would begin to provide less complete and detailed information. This would interfere with one of the main purposes of the registry by diminishing the effectiveness of the exchange of information between law enforcement agencies.

KSCPOST was also concerned about protecting the records of its investigations into alleged violations of the Kansas Law Enforcement Training Act. KSCPOST argued that, similar to how other licensing entities in Kansas operate, the complaints and investigation records should remain confidential until the investigation determines there is sufficient evidence of a violation to continue on to a public hearing and possible action against the officer's certification.

The opponents of the bill argued it is important for the public to have access to all information about law enforcement officer misconduct. The opponents opined that it is the public's right to know the history and conduct of law enforcement officers because law enforcement officers have been given great power and responsibilities. The opponents pointed out that, before hiring an officer, law enforcement agencies are not required to check KSCPOST's records for past complaints or the circumstances leading to a previous termination of employment. The opponents discussed how reporters have been able to gather and expose information from KSCPOST about an officer's prior conduct that was concerning to the city residents but had not risen to the level necessitating KSCPOST take action against the officer's certification.

The House Committee amended the bill. Instead of creating a new statute to address the disclosure of complaints and investigatory records, the House Committee added a new subsection to K.S.A. 2016 Supp. 74-5607. The new subsection specified that the KORA exemption for criminal investigation records, K.S.A. 2017 Supp. 45-221(a)(10), applied to any complaint and investigatory records received, created, or maintained by KSCPOST. The House Committee also modified the proposed amendments to K.S.A. 2016 Supp. 74-5611a to classify the information and documents in the central registry as "personnel records," making them

exempt from disclosure through a KORA request pursuant to K.S.A. 2016 Supp. 45-221(a)(4). The bill passed out of the House Committee and was passed by the House of Representatives as amended.

The amended bill was received by the Senate and assigned to the Senate Judiciary Committee. The Senate Committee held a hearing on the bill on March 15, 2017. The same arguments that were made before the House Committee were made during the Senate Committee hearing. Additionally, opponents questioned the House amendments to the bill. The opponents questioned whether the bill referenced the most appropriate KORA exemptions. Instead of the criminal investigation records exemption and the personnel records exemption, the opponents suggested that the administrative adjudication exemption in K.S.A. 45-221(a)(11), and the unwarranted invasion of personal privacy exemption in K.S.A. 45-221(a)(30) may be more fitting exemptions. The chair of the Senate Committee, Sen. Rick Wilborn, requested the proponents and opponents meet and attempt to reach a compromise; however, they were unable to do so. The Senate Committee took no action on the bill.

During the legislative committees' discussions of the bill, it became clear that there were questions regarding how KORA and its exemptions applied to KSCPOST records and how access to other licensing entity records compared to access to KSCPOST records. On March 28, 2017, Representative Blaine Finch asked the Judicial Council to study H.B. 2070 as originally proposed and as amended. On June 2, 2017, the Judicial Council referred the study to the Criminal Law Advisory Committee with the addition of two ad hoc members who are experts on the Kansas open records act ("the Committee").

METHOD OF STUDY

During its study of H.B. 2070, the Committee read the original study request and associated materials such as the bill (copy of bill on pages 20-26) and related testimony from the House Committee's January 25, 2017 hearing and the Senate Committee's March 15, 2017 hearing. The Committee studied the Kansas Open Records Act, the Kansas Law Enforcement Training Act, the relevant Kansas Administrative Regulations, and the Kansas statutes governing the confidentiality of other Kansas board or licensing entities' records. The Committee educated itself on KSCPOST by reviewing how KSCPOST is structured, KSCPOST's purpose, fictional

examples of the KSCPOST “Notice of Termination or Status Change” form, examples of a final hearing order issued by KSCPOST, and information from other states’ peace officer standards and training organizations about whether their records are subject to public disclosure.

The Committee met four times in person and twice via conference call from July 2017 to December 2017.

COMMITTEE DISCUSSION

There are two main issues addressed in H.B. 2070 – (1) the confidentiality of KSCPOST’s central registry, and (2) the confidentiality of complaints of violations of the Kansas Law Enforcement Training Act and KSCPOST’s subsequent investigation records into the alleged violations. KSCPOST was created by and is governed by the Kansas Law Enforcement Training Act, K.S.A. 74-5601, *et seq.* The primary role of KSCPOST is to certify (i.e., license) all Kansas law enforcement officers. Every law enforcement officer in Kansas must apply and be certified by KSCPOST. After certifying a law enforcement officer, KSCPOST has the authority to reprimand the officer, or suspend, place conditions on, or revoke the certification. *See* K.S.A. 2017 Supp. 74-5616. KSCPOST does not handle general officer discipline; it may only take action against the officer’s certification when an officer’s actions violate the Kansas Law Enforcement Training Act. KSCPOST becomes aware of potential violations of the Kansas Law Enforcement Training Act in a variety of ways. KSCPOST receives complaints directly from the public; KSCPOST becomes aware of an officer’s actions through a report in the media; and KSCPOST is informed of an officer’s actions through the “Notice of Termination or Status Change” form submitted to KSCPOST by a law enforcement agency after the officer is no longer employed by agency.

KSCPOST’s Central Registry

K.S.A. 2017 Supp. 74-5611a(a) requires KSCPOST to “establish and maintain a central registry of all Kansas police officers or law enforcement officers.” The central registry contains all information needed to track whether an individual is qualified to be certified and maintain certification as a law enforcement officer. The registry file on an officer may contain: the officer’s name and employing agency, the current standing of the officer’s certification, demographic information about the officer, the officer’s law enforcement employment history,

the officer's annual in-service training report, any Notice of Termination or Status Change forms, a terminated officer's statement, firearms qualification report, extension, modification, or waiver requests, complaints made directly to KSCPOST about the officer, and individual information requests.

Every Kansas law enforcement agency must submit a "Notice of Termination or Status Change" form to KSCPOST every time there is a change in an employee's classification, a termination or separation from employment, a change of name, a change of rank or title, or if an employee returns to duty from medical, military, or other kinds of leave. If the form was submitted due to a termination or separation from employment, the law enforcement agency must indicate the reason for the termination or separation. *See* K.S.A. 2017 Supp. 74-5611a(d). The form requires the agency to indicate if the reason for the separation from employment was:

- (1) a voluntary resignation under ordinary circumstances, meaning the officer resigned for personal or professional reasons and not to avoid potential disciplinary or adverse employment action;
- (2) a voluntary resignation under questionable circumstances, meaning the officer resigned while being investigated or investigative, disciplinary, or legal action was being contemplated;
- (3) an involuntary negotiated resignation, meaning the officer was offered the opportunity to resign to avoid potential disciplinary or adverse employment or legal action; or
- (4) a termination, meaning the officer's employment was terminated involuntarily. *See* KSCPOST Form CR 304.

If the reason for separation was one of the last three options, the agency is required to provide an explanation of the circumstances under which the officer resigned or was terminated. K.S.A. 2017 Supp. 74-5611a(d) requires the report be available to the terminated officer and any law enforcement agency to which the terminated officer later applies for a position as a law enforcement officer. The terminated officer may submit a written statement to KSCPOST in response to the termination. That written statement must be maintained in KSCPOST's central registry along with the "Notice of Termination or Status Change" form that includes the law enforcement agency's explanation of events. *See* K.S.A. 2017 Supp. 74-5611a(d). KSCPOST

reviews the report and statements associated with a resignation or termination and evaluates whether KSCPOST needs to conduct an independent investigation into the officer's actions to determine whether there has been a violation of the Kansas Law Enforcement Training Act and if KSCPOST will take any action against the officer's certification.

If KSCPOST determines there has been a violation of the Law Enforcement Training Act, it will issue an order detailing the officer's conduct and the action being taken against the officer's certification. The order may be in the form of a written consent agreement, summary order, or final order. A chart showing the officer's name, agency, the action taken by KSCPOST, and the date of such action is available on the KSCPOST website. A copy of the written order is currently available to anyone who makes a request under the Kansas Open Records Act. Copies of many of the orders are also available online from third parties¹. The written orders contain detailed findings of fact and explanations of why action is being taken.

The Purpose of the Central Registry

The first goal of H.B. 2070 was to make it clear that the information provided to KSCPOST on the "Notice of Termination or Status Change" form from law enforcement agencies and the law enforcement officer's statement in response to the separation from employment could not be disclosed in response to a KORA request. The Committee agreed such records should not be disclosed to the public.

The Committee first looked at the plain language of the statute to determine the legislature's intended purpose for KSCPOST's central registry. K.S.A. 2017 Supp. 74-5611a(a) states:

"The purpose of the registry is to be a resource for all agencies who appoint or elect police or law enforcement officers to use when reviewing employment applications of such officers. The registry shall be made available only to those agencies who appoint or elect police or law enforcement officers."

¹ For example, Mudrock.com has many of the final orders it requested through a KORA request - <https://www.mudrock.com/agency/kansas-111/kansas-commission-on-peace-officers-standards-and-training-6328/>.

The Committee agreed the statute clearly states the registry is for the use of law enforcement agencies and protects the records in the registry from being disclosed to anyone except for agencies who appoint or elect police or law enforcement officers. Under KORA, if another specific statute prohibits the disclosure of records, it controls over KORA. K.S.A. 2017 Supp. 45-221(a)(1). Therefore, the Committee thought the clear statement limiting access to the registry to agencies who appoint or elect police or law enforcement officers should be sufficient to deny a KORA request for information in the registry. However, in practice, there have been disagreements about what is included in the registry and what can be disclosed by KSCPOST. Specifically, requesters have argued the “Notice of Termination or Status Change” form should be disclosed.

The Committee thought it was reasonable that an officer’s file in the registry would contain both “Notice of Termination or Status Change” forms and any complaints received from members of the public. The Committee understood that the registry facilitates the open exchange of information about law enforcement officers between law enforcement agencies. Some of the most important information exchanged through the registry is the explanation of why an officer resigned or was terminated by another agency. The legislature specified that an agency would be “absolutely immune from civil liability” for anything written in the report to KSCPOST explaining the circumstances surrounding the officer’s resignation or termination; confirming the legislature’s intent to encourage agencies to freely share information about the officer. *See* K.S.A. 2017 Supp. 74-5611a(e).

If the information about the reason for a separation from employment on the “Notice of Termination or Status Change” form were available to the public, it might have a chilling effect on the amount of information law enforcement agencies put into the registry. Reducing the information given by a law enforcement agency in the registry would defeat the registry’s purpose of facilitating the exchange of information between agencies.

The Committee discussed that law enforcement is a unique profession in that officers have the power to deprive people of their liberty and use deadly force; therefore, the public has a greater need to access information about the conduct of law enforcement officers. However, the Committee agreed the information should be provided by each law enforcement agency itself rather than by KSCPOST. KSCPOST receives information about the officer’s conduct from the

“Notice of Termination and Status Change” form and the officer’s written response, but there is no process for the officer to further challenge what the agency reported or for the agency to challenge what the officer reported. There is also no process for an agency to later amend its statement about the events if new facts are later discovered. KSCPOST was not intended to provide a system in which to litigate law enforcement agency personnel decisions, or as a central repository for all records related to an agency’s personal decisions.

When a law enforcement employer receives the information about a potential employee’s prior employment from KSCPOST it can directly discuss the matter with the officer and reach out to the prior employer to gather all the information necessary to make its hiring decision. In this way, KSCPOST functions as a pointer system, pointing the hiring agency to prior employers the agency may want to talk to before hiring the officer. The Committee agreed that the public should be receiving information about officer conduct from the law enforcement agency itself and not second-hand through KSCPOST, because the law enforcement agency would have the most accurate, complete, and up-to-date information.

As discussed above, the Committee recommends the public be able to request KSCPOST provide the names of an officer’s previous law enforcement employers and dates of employment. This would then allow the requester to identify specific law enforcement agencies to contact and request additional information. The Committee acknowledged that this is not a guaranteed way for the public to gather information about an officer’s conduct, because under KORA the law enforcement agency may choose to deny the request pursuant to KORA’s exemptions, such as the personnel records or criminal investigation records exemptions. *See* K.S.A. 2017 Supp. 45-221(a)(4) & (10). These exemptions are discretionary and the agency may choose not to invoke the exemptions and instead, release information. The Committee did not believe that KSCPOST should be required to disclose information that the public could not receive under KORA from the individual law enforcement agencies.

H.B. 2070 As Amended

The House Judiciary Committee’s amended version of H.B. 2070 proposed to amend K.S.A. 74-5611a to classify the information and documents in the registry as “personnel records” making the registry exempt from disclosure through a KORA request pursuant to K.S.A. 2017

Supp. 45-221(a)(4). As the opponents to the bill pointed out, K.S.A. 2017 Supp. 45-221(a)(4) allows a public agency to choose not to disclose “[p]ersonnel records, performance ratings or individually identifiable records pertaining to *employees or applicants for employment...*” (emphasis added). The law is unsettled whether an agency like KSCPOST can invoke this exemption since the law enforcement officer is not an employee or applicant for employment with KSCPOST. A similar question is currently pending before the Kansas Supreme Court in *Salina Journal v. Brownback*, No. 115,194 (Kansas Court of Appeals decision found at 54 Kan. App. 2d 1). Therefore, at this time, it is unclear whether KSCPOST could invoke the personnel records exemption to protect information in its registry from KORA requests. Even if KSCPOST were able to invoke the personnel exemption, the Committee recommends against the approach taken in the bill as amended by the House Committee because it is inconsistent with how similar issues have been addressed with other licensing agencies.

As discussed above in the recommendations section of this report, the Committee recommends K.S.A. 2017 Sup. 74-5611a be amended to declare that records in the central registry are confidential except as provided in the statute. The Committee also recommends the statute be amended to provide a list of information KSCPOST may disclose to any member of the public.

KSCPOST’s Complaints and Investigative Records

The second goal of H.B. 2070 was to protect the disclosure of complaints made against an officer and the prehearing records created by the KSCPOST investigator assigned to investigate the complaint through an open records request. The bill, as originally introduced, created a new statute declaring any complaint and related investigatory records confidential. The bill went on to specify situations where a complaint against an officer and the related investigatory records could be disclosed. The records could be used in any proceeding conducted by KSCPOST; could be disclosed to other municipal, state, or federal licensing, regulatory or enforcement agencies; and to the director of police training.

KSCPOST's Investigation and Certification Action Proceedings

The Committee learned about KSCPOST's investigation and certification action procedures. KSCPOST's administrative proceedings are governed by the Kansas Administrative Procedure Act, K.S.A. 77-501, *et seq.*

According to KSCPOST, when it receives a complaint or is otherwise informed of an officer's conduct that may violate the Kansas Law Enforcement Training Act, KSCPOST appoints an investigator to conduct an administrative investigation. The investigator may contact the officer's employing agency and request the agency's files, conduct interviews, and collect information from a variety of sources. Because KSCPOST's investigation records may contain very sensitive information such as witness statements and the investigative file from the officer's employing agency, the Committee agreed it is important that such records are confidential and not subject to an open records request submitted to KSCPOST.

When complete, the investigator's findings are reviewed by KSCPOST's Investigative Committee. The Investigative Committee is comprised of three KSCPOST commissioners. The Investigative Committee determines the cases in which KSCPOST will pursue action against the officer's law enforcement certification. If the Investigative Committee determines no action against the officer's certification is necessary, the investigation is closed and no action is taken. If the Investigative Committee determines an officer's conduct warrants action against the officer's certification, the Investigative Committee agrees on what kind of action should be taken (revocation, suspension, reprimand, censorship, or conditioning), and issues a written summary order. The summary order contains information about jurisdiction, the facts of the case, and the kind of action being taken against the officer's certification. The Investigative Committee's meeting is not open to the public and the respondent (officer being investigated) is not involved in the meeting.

The Investigative Committee's summary order is mailed to the respondent. The respondent has 18 days to respond and request a hearing. If the respondent fails to respond within 18 days, the summary order becomes the final order. If the respondent requests a hearing, the case goes before the KSCPOST Hearing Committee, which consists of three KSCPOST commissioners appointed by the full commission. The Hearing Committee hears evidence

presented by KSCPOST and the respondent. The Hearing Committee then makes findings of fact and determines the appropriate action against the officer's certification. The Hearing Committee writes the final order which may then be appealed pursuant to the Kansas Judicial Review Act.

Pursuant to the Kansas Administrative Procedure Act, K.S.A. 77-523(f), the hearing before the Hearing Committee is open to the public. It is the Committee's understanding that all evidence and records of the hearings before KSCPOST's Hearing Committee are available to the public. The Committee also agreed any summary order written by the Investigative Committee should be available to the public even if the respondent requests a hearing and the summary order does not become the final order.

Other Professional Licensing Entities

The Committee reviewed how other state level professional licensing entities handle the disclosure of complaints and the licensing entities' investigations into those complaints. The statutes and court rules governing acupuncturists, attorneys, barbers, dentists, doctors, physician assistants, physical therapists, occupational therapists, athletic trainers, radiologic technologists, and nurses all provide that complaints, records, and information received, obtained, or maintained by the entity are confidential and will not be disclosed except in the specific situations listed in the statute. *See* K.S.A. 65-1135; K.S.A. 65-1467; K.S.A. 65-1831; K.S.A. 65-2898a; K.S.A. 65-7620; and Kansas Supreme Court Rule 222.

For example, if the Kansas Board for Discipline of Attorneys receives a complaint about an attorney, the board will investigate that complaint to determine if the attorney violated the Kansas Rules of Professional Conduct, the Rules Related to the Discipline of Attorneys, or the attorney's oath of office. The complaint and the investigator's report are confidential, not subject to public disclosure. 2017 Kan. S. Ct. R. 271; Rule 222. After reviewing the investigation report and the case file, if the Review Committee refers the case for prosecution of formal charges, the pleadings, exhibits admitted during the formal hearing, and the disposition of the proceedings are available to the public. 2017 Kan. S. Ct. R. 271; Rule 222(e)(2). Information contained in the complaint and the investigation report may be revealed in exhibits and orders related to the formal hearing proceedings; however, the original complaint and investigative report are not

available for review by the general public unless those documents are later included as exhibits in the hearing. *Id.*

Protecting a complaint and prehearing investigation report is very important when the licensing entity decides not to take action against the professional's license. Both the Kansas Board for Discipline of Attorneys and the Kansas Dental Board do not release the complaint or the investigation report if no action is taken against the professional's license. Such confidentiality rules protect professionals' reputations from being damaged by frivolous or fictitious and vindictive complaints. The Committee concluded law enforcement officers should have the same level of protection as other Kansas professionals from the release of complaints and prehearing investigative reports.

H.B. 2070 As Amended

Instead of adding a new statute, H.B. 2070 as amended by the House proposed to add a new section to K.S.A. 2016 Sup. 74-5607 specifying that the KORA exemption for criminal investigation records, K.S.A. 2017 Supp. 45-221(a)(10), applied to any complaint and investigatory records received, created, or maintained by KSCPOST. The Committee recommends against this approach because the criminal investigation records exemption does not actually fit the type of records received, created, and maintained by KSCPOST. KSCPOST is not conducting a criminal investigation; it is conducting an administrative investigation.

KORA has an administrative adjudication/civil litigation exemption. K.S.A. 2017 Supp. 45-221(a)(11) says a public agency is not required to disclose "[r]ecords of agencies involved in administrative adjudications or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent." This exemption provides protection against disclosure of KSCPOST's investigative records while the case is pending but not after the case has finished.

The Committee recommends against the approach taken in H.B. 2070 as amended. The Committee concluded the best approach would be to include all records related to violations of the Kansas Law Enforcement Training Act as a part of the central registry, and then specify

within the statute which records can be disclosed. This approach would protect all complaints and prehearing investigation records from disclosure while making it clear which records can be disclosed.

HOUSE BILL No. 2070

By Committee on Judiciary

1-18

1 AN ACT concerning the Kansas law enforcement training act; relating to
2 open records, exemptions; amending K.S.A. 2016 Supp. 74-5611a and
3 repealing the existing section.
4

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

6 Section 1. K.S.A. 2016 Supp. 74-5611a is hereby amended to read as
7 follows: 74-5611a. (a) The commission shall establish and maintain a
8 central registry of all Kansas police officers or law enforcement officers.
9 The purpose of the registry is to be a resource for all agencies who appoint
10 or elect police or law enforcement officers to use when reviewing
11 employment applications of such officers. The registry shall be made
12 available only to those agencies who appoint or elect police or law
13 enforcement officers.

14 (b) The director shall provide forms for registration and shall refuse
15 any registration not submitted on such form in full detail.

16 (c) Within 30 days of appointment, election or termination, every city,
17 county and state agency, every school district and every community
18 college shall submit the name of any person appointed or elected to or
19 terminated from the position of police officer or law enforcement officer
20 within its jurisdiction.

21 (d) Upon termination, the agency head shall include a report
22 explaining the circumstances under which the officer resigned or was
23 terminated. Such termination report shall be available to the terminated
24 officer and any law enforcement agency to which the terminated officer
25 later applies for a position as a police officer or law enforcement officer.
26 The terminated officer may submit a written statement in response to the
27 termination and any such statement shall be included in the registry file
28 concerning such officer. The director shall adopt a format for the
29 termination report.

30 (e) The agency, agency head and any officer or employee of the
31 agency shall be absolutely immune from civil liability:

32 (1) For the report made in accordance with subsection (d); and

33 (2) when responding in writing to a written request concerning a
34 current or former officer from a prospective law enforcement agency of
35 that officer for the report made in accordance with subsection (d) and for
36 the disclosure of such report.

1 (f) *The registry maintained in accordance with subsection (a) and the*
2 *report submitted in accordance with subsection (d) shall be confidential*
3 *and shall not be subject to disclosure under the Kansas open records act,*
4 *K.S.A. 45-215 et seq., and amendments thereto. The confidentiality*
5 *prescribed by this section is not subject to expiration pursuant to K.S.A.*
6 *45-229, and amendments thereto, or any other statute.*

7 New Sec. 2. (a) Except as provided in subsection (b), any complaint
8 or report, record or other information relating to a complaint which is
9 received, obtained, created or maintained by the commission shall be
10 confidential and shall not be subject to disclosure under the open records
11 act, K.S.A. 45-215 et seq., and amendments thereto. The confidentiality
12 prescribed by this section is not subject to expiration pursuant to K.S.A.
13 45-229, and amendments thereto, or any other statute.

14 (b) Any complaint, report, record or other information relating to a
15 complaint which is received, obtained, created or maintained by the
16 commission may be disclosed:

17 (1) In any proceeding conducted by the commission in accordance
18 with the Kansas administrative procedure act or in an appeal of an order of
19 the commission entered in a proceeding, or to a party in such proceeding
20 or that party's attorney;

21 (2) to a municipal, state or federal licensing, regulatory or
22 enforcement agency with jurisdiction over acts or conduct similar to acts
23 or conduct which would constitute grounds for action under this act; and

24 (3) to the director of police training when such disclosure is relevant
25 to the exercise of the authority granted in K.S.A. 74-5604a(b), and
26 amendments thereto.

27 (c) Any complaint or report, record or other information disclosed by
28 the commission as authorized by this section shall remain under seal in the
29 record of the administrative proceeding in which disclosed and shall not be
30 redisclosed by the receiving party or agency, except as otherwise
31 authorized by law.

32 (d) This section shall be part of and supplemental to the Kansas law
33 enforcement training act.

34 Sec. 3. K.S.A. 2016 Supp. 74-5611a is hereby repealed.

35 Sec. 4. This act shall take effect and be in force from and after its
36 publication in the statute book.

As Further Amended by House Committee

As Amended by House Committee

Session of 2017

HOUSE BILL No. 2070

By Committee on Judiciary

1-18

1 AN ACT concerning the Kansas law enforcement training act; relating to
2 open records, exemptions; amending K.S.A. 2016 Supp. 74-5607 and
3 74-5611a and repealing the existing-section sections.
4

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

6 Section 1. K.S.A. 2016 Supp. 74-5607 is hereby amended to read
7 as follows: 74-5607. (a) In addition to other powers and duties
8 prescribed by law, the commission shall adopt, in accordance with the
9 provisions of K.S.A. 77-415 et seq., and amendments thereto, rules and
10 regulations necessary to carry out the provisions of and to administer
11 the Kansas law enforcement training act. The commission may also
12 adopt such rules of procedure or guidance documents as are necessary
13 for conducting the business of the commission.

14 (b) The commission or a designated committee or member of the
15 commission may conduct investigations and proceedings necessary to
16 carry out the provisions of the Kansas law enforcement training act.
17 In all investigations, hearings or other matters pending before the
18 commission, the commission or any person acting as a presiding
19 officer for the commission shall have the power to:

20 (1) Administer oaths and take testimony;
21 (2) issue subpoenas, compel the attendance of witnesses and the
22 production of any papers, books, accounts, documents and testimony,
23 and to cause the deposition of witnesses, either residing within or
24 without the state, to be taken in the manner prescribed by law for
25 taking depositions in civil actions in the district courts. In case of the
26 failure of any person to comply with any subpoena issued on behalf of
27 the commission, or on the refusal of any witness to testify to any
28 matters regarding which the witness may be lawfully questioned, the
29 district court of any county, on application of a member of the
30 commission, may require compliance by proceedings for contempt, as
31 in the case of failure to comply with a subpoena issued from such
32 court or a refusal to testify in such court. Each witness who appears
33 before the commission by its order or subpoena, other than a state
34 officer or employee, shall receive for such attendance the fees and

1 mileage provided for witnesses in civil cases in courts of record which
2 shall be audited and paid upon presentation of proper vouchers sworn
3 to by such witnesses and approved by the chairperson of the
4 commission or by a person or persons designated by the chairperson;

5 (3) enter into contracts necessary to administer the provisions of
6 the Kansas law enforcement training act and the certification of law
7 enforcement officers; and

8 (4) assess the costs of such matters pending before the
9 commission under this section against the governmental entity
10 employing the police officer or law enforcement officer.

11 (c) Members of the commission attending meetings of the
12 commission, or attending a committee meeting authorized by the
13 commission, shall be paid amounts provided for in ~~subsection (e)~~ of
14 K.S.A. 75-3223(e), and amendments thereto. The commission shall be
15 responsible for approving all expense vouchers of members.

16 (d) The commission shall meet at least once each year at the
17 training center and may hold other meetings whenever they are called
18 by the chairperson.

19 (e) The commission shall adopt the rules and regulations that are
20 necessary to ensure that law enforcement officers are adequately
21 trained and to enforce the provisions of the Kansas law enforcement
22 training act. Such rules and regulations shall include, but are not
23 limited to, the establishment of a course of fire as a standard
24 qualification for active law enforcement officers to carry firearms that
25 may also be used for qualified retired officers to carry firearms
26 pursuant to federal law. The director of police training shall provide
27 qualification opportunities for qualified retired officers at the times
28 and places the director determines to be necessary. The training center
29 shall charge and collect a fee from retired state, local and federal
30 officers for the qualification opportunities, but these fees shall be
31 limited to the actual costs of presenting the standard qualifications
32 course.

33 (f) On and after July 1, 2012, the commission shall require
34 fingerprinting of each applicant for certification under the Kansas law
35 enforcement training act, and may require fingerprinting of a person
36 who has received a certificate under the Kansas law enforcement
37 training act prior to July 1, 2012, if such person's conduct is
38 investigated pursuant to this section. The commission shall appoint an
39 employee of the commission whose official duty includes seeking and
40 maintaining confidential information as provided by this subsection.
41 The appointed employee shall submit fingerprints to the Kansas
42 bureau of investigation and to the federal bureau of investigation for
43 the purpose of verifying the identity of such applicant or certificate

1 holder and for obtaining records of that person's criminal arrests and
 2 convictions. Upon the request of the appointed employee, the Kansas
 3 bureau of investigation and other criminal justice agencies shall
 4 provide to the appointed employee all background investigation
 5 information including criminal history record information, arrest and
 6 nonconviction data and criminal intelligence information. Such
 7 information, other than conviction data, shall be confidential and shall
 8 not be disclosed by the appointed employee, except for a purpose
 9 stated in this section. In addition to any other penalty provided by law,
 10 unauthorized disclosure of such information shall be grounds for
 11 removal from office or termination of employment.

12 *(g) Any complaint or report, record or other information relating to a*
 13 *complaint that is received, obtained, created or maintained by the*
 14 *commission shall be a record that is not required to be disclosed under*
 15 *K.S.A. 45-221(a)(10), and amendments thereto. The provisions of this*
 16 *subsection shall expire on July 1, 2022, unless the legislature reviews and*
 17 *reenacts this provision pursuant to K.S.A. 45-229, and amendments*
 18 *thereto, or any other statute.*

19 ~~Section 1-~~ Sec. 2. K.S.A. 2016 Supp. 74-5611a is hereby amended to
 20 read as follows: 74-5611a. (a) The commission shall establish and
 21 maintain a central registry of all Kansas police officers or law enforcement
 22 officers. The purpose of the registry is to be a resource for all agencies
 23 who appoint or elect police or law enforcement officers to use when
 24 reviewing employment applications of such officers. The registry shall be
 25 made available only to those agencies who appoint or elect police or law
 26 enforcement officers.

27 (b) The director shall provide forms for registration and shall refuse
 28 any registration not submitted on such form in full detail.

29 (c) Within 30 days of appointment, election or termination, every city,
 30 county and state agency, every school district and every community
 31 college shall submit the name of any person appointed or elected to or
 32 terminated from the position of police officer or law enforcement officer
 33 within its jurisdiction.

34 (d) Upon termination, the agency head shall include a report
 35 explaining the circumstances under which the officer resigned or was
 36 terminated. Such termination report shall be available to the terminated
 37 officer and any law enforcement agency to which the terminated officer
 38 later applies for a position as a police officer or law enforcement officer.
 39 The terminated officer may submit a written statement in response to the
 40 termination and any such statement shall be included in the registry file
 41 concerning such officer. The director shall adopt a format for the
 42 termination report.

43 (e) The agency, agency head and any officer or employee of the

1 agency shall be absolutely immune from civil liability:
2 (1) For the report made in accordance with subsection (d); and
3 (2) when responding in writing to a written request concerning a
4 current or former officer from a prospective law enforcement agency of
5 that officer for the report made in accordance with subsection (d) and for
6 the disclosure of such report.
7 (f) ~~The registry maintained in accordance with subsection (a) and the~~
8 ~~report submitted in accordance with subsection (d) shall be confidential~~
9 ~~and shall not be subject to disclosure under the Kansas open records act,~~
10 ~~K.S.A. 45-215 et seq., and amendments thereto. The confidentiality~~
11 ~~prescribed by this section is not subject to expiration~~ **considered**
12 **personnel records that are not required to be disclosed under K.S.A.**
13 **45-221(a)(4), and amendments thereto. The provisions of this**
14 **subsection shall expire on July 1, 2022, unless the legislature reviews**
15 **and reenacts this provision pursuant to K.S.A. 45-229, and amendments**
16 **thereto, or any other statute.**
17 ~~New Sec. 2. (a) Except as provided in subsection (b), any complaint~~
18 ~~or report, record or other information relating to a complaint which is~~
19 ~~received, obtained, created or maintained by the commission shall be~~
20 ~~confidential and shall not be subject to disclosure under the open records~~
21 ~~act, K.S.A. 45-215 et seq., and amendments thereto. The confidentiality~~
22 ~~prescribed by this section is not subject to expiration pursuant to K.S.A.~~
23 ~~45-229, and amendments thereto, or any other statute.~~
24 (b) ~~Any complaint, report, record or other information relating to a~~
25 ~~complaint which is received, obtained, created or maintained by the~~
26 ~~commission may be disclosed:~~
27 (1) ~~In any proceeding conducted by the commission in accordance~~
28 ~~with the Kansas administrative procedure act or in an appeal of an order of~~
29 ~~the commission entered in a proceeding, or to a party in such proceeding~~
30 ~~or that party's attorney;~~
31 (2) ~~to a municipal, state or federal licensing, regulatory or~~
32 ~~enforcement agency with jurisdiction over acts or conduct similar to acts~~
33 ~~or conduct which would constitute grounds for action under this act; and~~
34 (3) ~~to the director of police training when such disclosure is relevant~~
35 ~~to the exercise of the authority granted in K.S.A. 74-5604a(b), and~~
36 ~~amendments thereto.~~
37 (c) ~~Any complaint or report, record or other information disclosed by~~
38 ~~the commission as authorized by this section shall remain under seal in the~~
39 ~~record of the administrative proceeding in which disclosed and shall not be~~
40 ~~redisclosed by the receiving party or agency, except as otherwise~~
41 ~~authorized by law.~~
42 (d) ~~This section shall be part of and supplemental to the Kansas law~~
43 ~~enforcement training act.~~

1 Sec. 3. K.S.A. 2016 Supp. 74-5607 and 74-5611a ~~is~~-are hereby
2 repealed.

3 Sec. 4. This act shall take effect and be in force from and after its
4 publication in the statute book.

MINORITY STATEMENT

Written by Prof. Mike Kautsch

Ad Hoc Member of the Judicial Council's Criminal Law Advisory Committee

The Committee's recommended statutory amendment would prevent journalists from informing the public, in the way that a television news organization did last year, about questionable hiring of police officers.ⁱ In my view, the recommended amendment does not sufficiently balance two legitimate but competing interests. One basically is the interest of police in their security and the privacy of their personal information. The other is the public's interest in being informed about police officers' conduct and whether they are qualified to protect the public safety. My sense was that the balance reasonably could be struck more in favor of the public interest, so I voted against the recommended amendment and now submit this report.ⁱⁱ

Early this year, Brian Gregory, news director at KWCH12 in Wichita, said in legislative testimonyⁱⁱⁱ that, in 2016, journalists at the station had:

- reported that a city police chief in Kansas “had been fired three times by other law enforcement agencies in the state of Kansas before he was hired” by the city,
- reported that each of “the officers who served under” the chief “had been fired or resigned under suspicious circumstances,”
- after hearing that “there were other departments in the state that had similar issues with hiring police officers who had been fired or resigned under suspicious circumstances,” reported that “12 officers fired in 2015 in the state of Kansas were already rehired by other departments,” and
- reported that a city police officer previously had been fired from a sheriff's department.^{iv}

For its reporting about questionable police hiring, KWCH won a National Edward R. Murrow Award for journalistic excellence.^v KWCH had based its award-winning news reports in

significant part on copies of records that KWCH had requested and received from KSCPOST under the Kansas Open Records Act (KORA).^{vi}

Mr. Gregory testified that the key records KSCPOST disclosed to KWCH under KORA were “Termination Notice or Status Change forms.”^{vii} During a Committee meeting, KSCPOST Executive Director Gary Steed reviewed the contents of the Change of Status form. He said that, if a Kansas law enforcement agency “terminates an officer, the agency must notify CPOST of the termination and reasons for the termination by using the ‘Status Change Form.’”^{viii}

In his legislative testimony, Mr. Gregory indicated that, because of the information in the forms that KSCPOST had disclosed, KWCH was able to report about police officers who were hired by police agencies after having been fired by previous police employers, or after having resigned from them under questionable circumstances.^{ix} KWCH’s news report was intended to benefit the public by encouraging community leaders to improve the process of police hiring.^x

Now, however, if the Committee’s recommended statutory amendment becomes law, KSCPOST no longer will be authorized to disclose the kind of information that was vital to KWCH’s reporting. To be sure, the recommended amendment would permit KSCPOST to disclose a police officer’s name and “the name of previous law enforcement employers and the dates of employment with each employer.”^{xi} However, the amendment would not permit KSCPOST to disclose whether the officer was hired by an agency after having been fired by a previous employer or after having resigned from one under questionable circumstances.^{xii}

The scope of KSCPOST’s authority to make disclosures relates directly to concerns that prompted the Committee’s study of HB 2070. As Rep. Blaine Finch said in his request for the study, the concerns included HB 2070’s effect on the public’s need “to be able to obtain information regarding misdeeds by law enforcement officers.”^{xiii}

Nevertheless, Committee members generally declined to consider broader authority for KSCPOST to meet the public’s interest in obtaining information. As a consequence, the Committee did not develop a recommendation that KSCPOST be authorized to continue making disclosures of the kind the agency previously had made to KWCH. As the Committee’s draft report says, “The Committee did not believe that KSCPOST should be required to disclose

information that the public could not receive under KORA from the individual law enforcement agencies.”^{xiv}

A reason given for not considering broader authority for KSCPOST to inform the public was that doing so would require the Committee to enter the legislative realm of policy-making. As noted in draft Committee meeting minutes, “The Committee suggested that such a decision is a policy decision that should be made by the legislature.”^{xv} However, drafting recommended legislation generally implicates policy.^{xvi} Moreover, the Committee already had entered the realm of policy by developing the recommended statutory amendment. The recommendation that the Legislature limit KSCPOST’s authority to inform the public embodies a policy choice.

The Committee’s alternative would have been to recommend legislation that would result in greater transparency of KSCPOST. The value of transparency in law enforcement is widely recognized. As one police organization put it, “Given contemporary calls for greater transparency and scrutiny of law enforcement operations and performance, particularly in light of recent events, it is clear that substantially more extensive and detailed information is needed in order to promote a meaningful dialogue between law enforcement and the community.”^{xvii}

To be sure, developing legislation to broaden KSCPOST’s authority to inform the public would be challenging. Many competing considerations must be taken into account when balancing the public’s interest in having more information about police officers against the officers’ privacy interest. Nevertheless, the challenge is not insurmountable. The Committee’s discussions of KSCPOST, KORA and HB 2070 were rich. They could serve as a basis for formulating a legislative approach that would reasonably and effectively broaden KSCPOST’s authority to make disclosures.

One possibility might be a carefully crafted authorization for KSCPOST to disclose whether a police officer was hired after having been fired by an employer or after having resigned under questionable circumstances. Such an authorization may ideally be coupled with measures that would improve KSCPOST’s ability to obtain up-to-date, disclosable documentation of the reasons for a police officer’s termination. Other possibilities worth exploring might include a statutory provision under which an instance of police conduct becomes such a matter of public concern that greater disclosure of information by KSCPOST is

warranted. Perhaps another possibility could be to increase transparency of KSCPOST's processes for preventing the kind of questionable police hiring that KWCH brought to the public's attention. As Mr. Steed told the Committee, KSCPOST "tries to prevent officers from going from agency to agency to agency without behaviors or incidents being conveyed to the next agency."^{xviii} If transparency of such efforts by KSCPOST could be increased, the benefit could be greater public confidence that only qualified police officers are being hired. In this same vein, perhaps consideration could be given to creating a readily accessible public record indicating whether or not employers of police make use of KSCPOST's informational resources before hiring. Mr. Steed told the Committee that KSCPOST encourages "all agencies to check with [KSCPOST] before hiring but there is no rule in place requiring a check with KSCPOST."^{xix}

The feasibility and desirability of possibilities such as the foregoing no doubt would be subject to debate. However, they are offered here with the hope of illustrating how further study could reveal how KSCPOST may do more to foster transparency and, ultimately, enhance public confidence in the state's law enforcement agencies.

ⁱ The Committee's recommendation is to amend provisions of the Kansas Law Enforcement Training Act, K.S.A. 74-5601, *et seq.* The amendment would limit the authority of the Kansas Commission on Peace Officers' Standards and Training (KSCPOST) to make disclosures in response to requests under the Kansas Open Records Act (KORA), 45-215, *et seq.*

ⁱⁱ I greatly appreciated the opportunity to serve as an ad hoc member of the Committee for the purpose of studying HB 2070. I learned a great deal from the participants' lively exchange of ideas and information related to the bill. In particular, I thank: Stephen Robison, chair, for thoughtfully and collegially guiding the Committee's deliberations; Laura Nordgren, staff attorney, for providing excellent support, and Gary Steed, executive director of KSCPOST, and Michelle Meier, KSCPOST's Commission Counsel, for consistently providing helpful information about KSCPOST and being sensitive to concerns about transparency of the agency.

ⁱⁱⁱ Legislative hearing testimony by Brian Gregory, KWCH news director (March 2017), included in Committee reference documents and titled, "HB 2070 Testimony."

^{iv} Gregory testimony, p. 1-2, note 3, *supra*.

^v *Eyewitness News Wins National Murrow Award*, KWCH12 news release (June 20, 2017), <http://www.kwch.com/content/news/Eyewitness-News-Wins-National-Murrow-Award-429692163.html>. ("The Murrow Awards are named after pioneering television news broadcaster Edward R. Murrow and recognize the pursuit of excellence in journalism.")

^{vi} Gregory testimony, p. 1-2; see note 3, *supra*.

^{vii} Gregory testimony, p. 2; see note 3, *supra*.

^{viii} Committee meeting minutes for July 7, 2017, p. 2.

^{ix} Gregory testimony, p. 1-2; see note 3, *supra*.

^x See note 5, *supra*. In the news release, Mr. Gregory was quoted as saying that the purpose of KWCH's reporting was "to hold our community leaders accountable to complete thorough background checks on the men and women they want to hire to protect our communities."

^{xi} *Report of the Judicial Council Criminal Law Advisory Committee--2017 H.B. 2070* (DRAFT prepared in September 2017, dated December 1, 2017), p. 12

^{xii} *Id.* The limited authorized disclosures appear on p. 12-13.

^{xiii} Letter from Rep. Finch to Nancy Strouse, executive director, Kansas Judicial Council (March 28, 2017), p. 2.

^{xiv} Draft report, p. 9; see note 11, *supra*.

^{xv} Draft minutes of the Committee's September 1, 2017, meeting, p. 5.

^{xvi} Courts not uncommonly recognize legislation as a manifestation or codification of public policy. See, e.g., *Standard Oil Co. of New Jersey v. U.S.*, 221 U.S. 1, 66 (1911), where the U.S. Supreme Court examined anti-trust law and referred to "the public policy which the act embodies" and *Herrell v. National Beef Packing Co.*, 292 Kan. 730, 744, in which the Kansas Supreme Court characterized a "statutory scheme" as indicative of "what the Kansas Legislature has actually said about public policy choices."

^{xvii} *IACP National Policy Summit on Community-Police Relations: Advancing a Culture of Cohesion and Community Trust*, International Association of Chiefs of Police (January 2015), p. 29, http://www.theiacp.org/Portals/0/documents/pdfs/CommunityPoliceRelationsSummitReport_web.pdf.

^{xviii} Minutes for July 7, 2017, p. 3; see note 8, *supra*.

^{xix} *Id.*