

March 1, 2018

***Opponent Testimony, HB 2625***  
***House Committee on Corrections and Juvenile Justice***  
***Rep. J. Russell Jennings, Chairman***

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Chairman Jennings and members of the House Committee on Corrections and Juvenile Justice:

Introduction

I respectfully submit this statement on the basis of my experience as an ad hoc member of the Judicial Council Criminal Law Advisory Committee last year when it studied issues addressed in HB 2625. I have adapted this statement from a minority report that I filed with the Advisory Committee majority's final report.

As a member of the faculty of the KU School of Law, I engage in teaching, research and service related to open-government laws and the First Amendment. The views I express in this statement are entirely my own and are not offered as representative of any position KU may hold as an institution on HB 2625 or any other matter.

Purpose of HB 2625 and Balancing of Competing Interests

HB 2625 clarifies the extent to which the Kansas Commission on Peace Officers' Standards and Training (CPOST) may disclose records in response to requests it receives under Kansas Open Records Act (KORA), 45-215, *et seq.* However, in my view, the bill would prevent CPOST from adequately informing the public about the qualifications of police in the state. Law that limits public access to public records as defined in KORA must balance competing interests. One 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. HB 2625 does not sufficiently balance these two legitimate but competing interests.

The public's interest in access to CPOST's records is strong. The agency plays a vital role in assuring that police departments in Kansas only employ qualified officers. As stated on CPOST's Web site (<https://www.CPOST.org/CPOST.php>), the agency's responsibilities include "granting certification to all Kansas full and part-time officers who meet the prerequisites for certification." K.S.A. 74-5605 includes a list of the qualifications required for certification. The qualifications include, in K.S.A. 74-5605(b)(5), "good moral character sufficient to warrant the public trust."

HB 2625's Limit on Public Access to Information

HB 2625 would not allow CPOST to disclose key information the public would need to be confident that only qualified officers are employed by police departments. For example, the bill

would prevent journalists from informing the public, in the way that a television news organization did in 2016, about questionable hiring of police officers.

Last year, Brian Gregory, then the news director at KWCH12 in Wichita, said in legislative testimony<sup>1</sup> 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.<sup>2</sup>

For its reporting about questionable police hiring, KWCH won a National Edward R. Murrow Award for journalistic excellence.<sup>3</sup> KWCH had based its award-winning news reports in significant part on copies of records that KWCH had requested and received from CPOST under KORA.

Mr. Gregory testified that the key records CPOST disclosed to KWCH under KORA were “Termination Notice or Status Change forms.”<sup>4</sup> In his legislative testimony, Mr. Gregory indicated that, because of the information in the forms that CPOST 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.<sup>5</sup> KWCH’s news report was intended to benefit the public by encouraging community leaders to improve the process of police hiring.<sup>6</sup>

Now, however, if HB 2625 becomes law, CPOST no longer will be authorized to disclose the kind of information that was vital to KWCH’s reporting. To be sure, Section 1(a)(5) would permit CPOST to disclose a police officer’s name and “the name of previous law enforcement employers and the dates of employment with each employer.” However, the HB 2625 would not permit CPOST 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. As such, the bill as written does not resolve concerns that the public needs “to be able to obtain information regarding misdeeds by law enforcement officers.”<sup>7</sup>

### Possible Ways to Rebalance Competing Interests

The alternative is to propose legislation that would result in greater transparency of CPOST. 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.”<sup>8</sup>

Admittedly, developing legislation to broaden CPOST’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 Criminal Law Advisory

Committee's discussions of these matters last year could serve as a basis for formulating a legislative approach that would reasonably and effectively broaden CPOST's authority to make disclosures.

One possibility might be a carefully crafted authorization for CPOST 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 CPOST'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 CPOST is warranted. Perhaps another approach could be to increase transparency of CPOST's processes for preventing the kind of questionable police hiring that KWCH brought to the public's attention. As CPOST Executive Director Gary Steed has stated, CPOST "tries to prevent officers from going from agency to agency to agency without behaviors or incidents being conveyed to the next agency."<sup>9</sup> If transparency of such efforts by CPOST 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 KSPPOST's informational resources before hiring. Mr. Steed told the Advisory Committee that CPOST encourages "all agencies to check with [CPOST] before hiring but there is no rule in place requiring a check with CPOST."<sup>10</sup>

### Closing Thought

I offer this testimony with the hope of illustrating how HB 2625 may be modified to foster more transparency by CPOST and, ultimately, enhance public confidence in the state's law enforcement agencies. I thank the committee for the opportunity to submit this statement in opposition to this bill.

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<sup>1</sup> Legislative hearing testimony by Brian Gregory, KWCH news director (March 2017), 2017 HB 2070.

<sup>2</sup> Gregory testimony, p. 1-2, note 1, *supra*.

<sup>3</sup> *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.")

<sup>4</sup> Gregory testimony, p. 1-2; see note 1, *supra*.

<sup>5</sup> Gregory testimony, p. 2; see note 1, *supra*.

<sup>6</sup> See note 3, *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."

<sup>7</sup> Letter from Rep. Blaine Finch, House Judiciary Chair, to Nancy Strouse, executive director, Kansas Judicial Council (March 28, 2017), p. 2.

<sup>8</sup> *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](http://www.theiacp.org/Portals/0/documents/pdfs/CommunityPoliceRelationsSummitReport_web.pdf).

<sup>9</sup> Minutes for July 7, 2017, p. 3.

<sup>10</sup> *Id.*