

Testimony to the Senate Judiciary Committee
In Support of HB 2070
March 15, 2017

Chairman Wilborn and members of the Committee:

HB 2070 amends the Kansas Law Enforcement Training Act, K.S.A. 74-5601 et seq., by deeming any complaint or report, record or other information relating to a complaint that is received, obtained, created or maintained by the commission shall be a record that is not required to be disclosed under K.S.A. 45-221(a)(10). It also deems the registry maintained in K.S.A. 74-5611a(a) and the report submitted in accordance with subsection (d) as personnel records that are not required to be disclosed under K.S.A. 45-221(a)(4). Both provisions are subject to the five-year sunset as required by K.S.A. 45-229.

This amendment brings the statute in line with previous legislative intent.

K.S.A. 74-5611a(a) currently states:

“The commission shall establish and maintain a central registry of all Kansas police officers or law enforcement officers. **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.**”

The KSCPOST Central Registry contains records from approximately 28,000 former and current officers. When an agency hires an officer, they are required to submit a form to KSCPOST that is kept in that officer's Central Registry file. Pursuant to K.S.A. 74-5611a(d) the agency must submit a report explaining the circumstances under which the officer left the department. This report is kept in the officer's Central Registry file.

The original legislative intent behind this statute was to prevent the “gypsy cop” from freely moving from department to department leaving behind various degrees of misconduct.

Agencies are required to report, in narrative form, conduct under which the officer was terminated or left the department under questionable circumstances. Many times, agencies attach to the form medical, psychiatric, psychological, internal affairs records, or criminal investigative records to give KSCPOST and potential hiring agencies details of the circumstances under which the officer left a department. This information, as was the original intent, is invaluable to agencies in hiring decisions as well as KSCPOST investigations into officers’ misconduct. Additionally, as is discussed routinely with agency human resource and legal departments, employment law is clear on what information must be released and what does not about an employee that has left.

This information generally constitutes agency medical, psychiatric, psychological, personnel, and criminal investigative records as defined in K.S.A. 45-221(a)(3), (4) and (10). When these records are requested directly from an agency they are generally not released. That being the case, there should not be a system in place that would allow for a fishing expedition through the KSCPOST Central Registry. This comes up many times in litigation across the state.

If an open records request is submitted to KSCPOST for this information today we release when the officer was certified, who the officer has worked for, and a training history. This information will continue to be released under HB 2070. We also provide the demographic form and termination form – generally redacted to exclude the agency’s medical, psychiatric, psychological, personnel, and criminal investigative records. This is a time-consuming exercise when the requesting person is generally directed back to the agency from which the information is being sought. This would also aid those requesting records to direct their time and resources back to the submitting law enforcement agency that the records belong to.

Most KSCPOST investigations originate from the receipt of the agency termination or status change form. Some investigations arise from calls, letters, or media coverage of local events around the state. Generally, in each case the department is asked to provide medical, psychiatric, psychological, personnel, and/or criminal investigative records during the investigation. The memorandum prepared for the KSCPOST investigative

committee in the exercise of their quasi-judicial function generally contains a restatement or summary of the agency's submitted medical, psychiatric, psychological, personnel, and/or criminal investigative records.

Law enforcement officer misconduct cases are like no other profession. To allow this information to be subject to potential release pursuant to the open records act would cause a chilling effect on complaints and requested information that is submitted during an investigation.

The purpose of this legislation is to bring the statute in line with the original statutory intent. It is not the intent of KSCPOST to unduly suppress information but merely direct those requests back to the agency for which the information belongs.

Michelle R. Meier
Commission Counsel