



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

Chairman Wilborn and members of the Committee:

As the Commission Chairperson of the Commission on Peace Officers' Standards and Training (CPOST), I hereby support the adoption of HB 2070.

CPOST maintains a central registry that includes the Notice of Termination or Status Change. Within 30 days of the termination or resignation of a law enforcement officer, the law enforcement agency must submit a Notice of Termination or Status Change to CPOST. Among other information, this form indicates whether the officer left under questionable circumstances such as an investigation, or if there is a possible Law Enforcement Training Act violation. There is also space for the law enforcement agency to provide a narrative of the circumstances of the separation.

The purpose of this form and the central registry is to serve as a resource for law enforcement agencies when hiring officers. The form is also used to determine if CPOST will pursue an investigation into the officer's law enforcement certification. The central registry is intended to only be available to law enforcement agencies, as is clear in K.S.A. 74-5611a(a), which states in part:

“The registry shall be made available only to those agencies who appoint or elect police or law enforcement officers.”

However, the current wording of the statute is insufficient to close the records to the public, as was originally intended. The necessary language indicating that the central registry is confidential, considered both a personnel record and part of a criminal investigation record and not to be released under the Kansas Open Records Act, K.S.A. 45-215 et.seq, is reflected in HB 2070.

If the information included on the Notice of Termination or Status Change form is required to be released, and not redacted as is current CPOST practice, the quality and quantity of information received by CPOST from law enforcement agencies on this form will deteriorate. CPOST is presently subject to threats of litigation by those requesting full disclosure of the central registry form without redaction. For these same reasons, HB 2070 proposes to close records of complaints made to CPOST, as the agency cannot properly investigate officer misconduct without credible reports of officer misconduct.

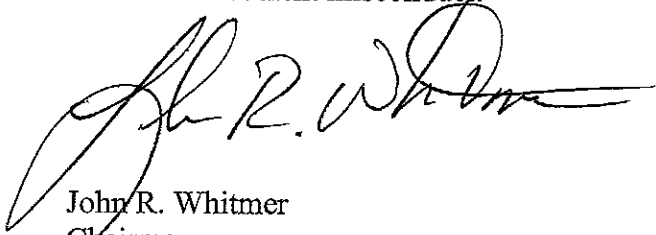
KORA requests for the information detailed in the Notice of Termination or Status Change form are more appropriately requested from, and released by, the original law enforcement agency that completed the form. That agency is better suited to determine what, if any, information is disclosed under KORA. The originating agency can determine if the records consist of personnel records or criminal investigative records, the release of which would interfere with prospective law enforcement action, criminal investigation or prosecution. The original law enforcement agency can assess these factors, whereas CPOST cannot. The intent of closing the central registry is not to interfere with the public interest in open records, but to point those requests back to the appropriate agency, the agency that created the records and understands their part in that agency. The result of the current statute is that CPOST receives requests that attempt to circumvent the clear and recognized exceptions to KORA disclosure.

It is important to note that HB 2070 does not impact most CPOST records, which will continue to be disclosed in KORA requests. When CPOST investigates officer misconduct and the Investigative Committee directs CPOST to proceed with an action on an officer's certification, there will be a record of that licensing action. Those records, such as Consent Agreements, Summary Orders, and Hearing Orders, give a succinct account of the alleged conduct of the officer and the result upon the officer's certification. All these records, along with training and employment records of an officer, will continue to be public record and released pursuant to KORA.

The House re-referred the bill to the Judiciary Committee after a concern was raised by the committee's ranking minority member. The ranking member then was instrumental in crafting a compromise that was agreed to by all parties. The committee subsequently amended the bill by removing New Section 2 which was the provision in question when the bill was debated on General Orders.

Instead of New Section 2, the committee added a provision to K.S.A. 74-5607 to state that any complaint, report, or record that is received, obtained, created, or maintained by the Commission shall be treated as a criminal investigation record which is not required to be disclosed, unless ordered by a court if certain conditions are met. The originating agency would still be free to release that information if they chose to do so and the final results of CPOST investigations will continue to be released as is current practice. The committee and the full House then passed the bill without objection.

The adoption of HB 2070 will adhere to the original statutory intent of the registry and allow for CPOST to effectively and thoroughly investigate violations of the Kansas Law Enforcement Training Act, while recognizing the public interest of access to substantiated cases of law enforcement misconduct.

A handwritten signature in black ink, appearing to read "John R. Whitmer", with a long, sweeping horizontal stroke extending to the right.

John R. Whitmer
Chairman
Kansas Commission on Peace Officer's
Standards and Training