

HOUSE BILL No. 2069

By Committee on Judiciary

1-18

1 AN ACT concerning *law enforcement; relating to hiring practices and*
2 *consideration of prior employment records; open records act;*
3 *requests for law enforcement assistance from jurisdictions located*
4 *outside the state of Kansas; the Kansas law enforcement training act;*
5 ~~*relating to*~~ *qualifications of applicants for certification;* ~~*definitions;*~~
6 *amending K.S.A. 2016 Supp. 45-220, 48-3602 and 74-5605 and*
7 *repealing the existing ~~section~~ sections.*
8

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

10 *New Section 1. (a) A hiring agency shall require each applicant*
11 *interviewed by such agency for a law enforcement officer position who*
12 *has been employed by another state or local law enforcement agency or*
13 *governmental agency to execute a written waiver that: (1) Explicitly*
14 *authorizes each state or local law enforcement agency or governmental*
15 *agency that has employed the applicant to disclose the applicant's files to*
16 *the hiring agency; and (2) releases the hiring agency and each state or*
17 *local law enforcement agency or governmental agency that employed the*
18 *applicant from any liability related to the use and disclosure of the*
19 *applicant's files. An applicant who refuses to execute the written waiver*
20 *shall not be considered for employment by the hiring agency. The hiring*
21 *agency shall include the written waiver with each request for*
22 *information submitted to a state or local law enforcement agency or*
23 *governmental agency that has employed the applicant.*

24 *(b) Except as provided in subsection (c), a state or local law*
25 *enforcement agency or governmental agency that receives a written*
26 *waiver described in subsection (a) shall disclose the applicant's files to*
27 *the hiring agency not more than 21 days after such receipt. Such law*
28 *enforcement agency or governmental agency may choose to disclose the*
29 *applicant's files by either: (1) Providing copies to the hiring agency; or*
30 *(2) allowing the hiring agency to review the files at the law enforcement*
31 *agency's office or governmental agency's office.*

32 *(c) (1) A state or local law enforcement agency or governmental*
33 *agency is not required to disclose the applicant's files pursuant to*
34 *subsection (b) if such agency is prohibited from providing the files*
35 *pursuant to a binding nondisclosure agreement to which such agency is*
36 *a party, and such agreement was executed before July 1, 2017.*

1 (2) *A state or local law enforcement agency or governmental*
2 *agency is required to disclose the applicant's files pursuant to subsection*
3 *(b) if such files are subject to a binding nondisclosure agreement to*
4 *which such agency is a party, and such agreement was executed on or*
5 *after July 1, 2017, but the disclosure shall be limited to files necessary to*
6 *determine the qualifications and fitness of the applicant for performance*
7 *of duties in a law enforcement officer position.*

8 (3) *A state or local law enforcement agency or governmental*
9 *agency may redact personally identifiable information of persons other*
10 *than the applicant in files disclosed to the hiring agency.*

11 (d) *A state or local law enforcement agency or governmental*
12 *agency shall not be liable for complying with the provisions of this*
13 *section in good faith or participating in an official oral interview with an*
14 *investigator regarding the applicant.*

15 (e) *Files obtained pursuant to this section shall not be disclosed by*
16 *the hiring agency, except as necessary for such agency's internal hiring*
17 *processes.*

18 (f) *Files obtained pursuant to this section shall constitute, for the*
19 *purposes of the open records act, a record of the state or local law*
20 *enforcement agency or governmental agency that made, maintained or*
21 *kept such files. Such files shall not be subject to a request for inspection*
22 *and copying under the open records act directed toward the hiring*
23 *agency obtaining the files, and shall not be subject to discovery,*
24 *subpoena or other process directed toward the hiring agency obtaining*
25 *the files. The official custodian of such files, for the purposes of the*
26 *open records act, shall be the official custodian of the records of such*
27 *state or local law enforcement agency or governmental agency.*

28 (g) *As used in this section:*

29 (1) *"Files" means all performance reviews or other files related to*
30 *job performance, commendations, administrative files, grievances,*
31 *previous personnel applications, personnel-related claims, disciplinary*
32 *actions, internal investigation files, suspensions, investigation-related*
33 *leave, documents concerning termination or other departure from*
34 *employment, all complaints and all early warning information. "Files"*
35 *shall not include nonperformance documents or data, including, but not*
36 *limited to, medical files, schedules, pay and benefit information or*
37 *similar administrative data or information. "Early warning*
38 *information" means information from a data-based management tool*
39 *designed to identify officers who may be exhibiting precursors of*
40 *problems on the job that can result in providing those officers with*
41 *counseling or training to divert them away from conduct that may*
42 *become a disciplinary matter.*

43 (2) *"Governmental agency" means the state or subdivision of the*

1 *state with oversight of the state or local law enforcement agency.*

2 (3) *"Hiring agency" means a state or local law enforcement agency*
3 *processing an application for employment, regardless of whether the*
4 *applicant is ultimately hired.*

5 (4) *"State or local law enforcement agency" means any public*
6 *agency employing a law enforcement officer as defined in K.S.A. 74-*
7 *5602, and amendments thereto.*

8 *Sec. 2. K.S.A. 2016 Supp. 45-220 is hereby amended to read as*
9 *follows: 45-220. (a) Each public agency shall adopt procedures to be*
10 *followed in requesting access to and obtaining copies of public records,*
11 *which procedures shall provide full access to public records, protect*
12 *public records from damage and disorganization, prevent excessive*
13 *disruption of the agency's essential functions, provide assistance and*
14 *information upon request and insure efficient and timely action in*
15 *response to applications for inspection of public records.*

16 (b) *A public agency may require a written request for inspection of*
17 *public records but shall not otherwise require a request to be made in*
18 *any particular form. Except as otherwise provided by subsection (c), a*
19 *public agency shall not require that a request contain more information*
20 *than the requester's name and address and the information necessary to*
21 *ascertain the records to which the requester desires access and the*
22 *requester's right of access to the records. A public agency may require*
23 *proof of identity of any person requesting access to a public record. No*
24 *request shall be returned, delayed or denied because of any technicality*
25 *unless it is impossible to determine the records to which the requester*
26 *desires access.*

27 (c) *If access to public records of an agency or the purpose for*
28 *which the records may be used is limited pursuant to K.S.A. 45-221 or*
29 *K.S.A. 2016 Supp. 45-230, and amendments thereto, the agency may*
30 *require a person requesting the records or information therein to*
31 *provide written certification that:*

32 (1) *The requester has a right of access to the records and the basis*
33 *of that right; or*

34 (2) *the requester does not intend to, and will not: (A) Use any list of*
35 *names or addresses contained in or derived from the records or*
36 *information for the purpose of selling or offering for sale any property*
37 *or service to any person listed or to any person who resides at any*
38 *address listed; or (B) sell, give or otherwise make available to any person*
39 *any list of names or addresses contained in or derived from the records*
40 *or information for the purpose of allowing that person to sell or offer for*
41 *sale any property or service to any person listed or to any person who*
42 *resides at any address listed.*

43 (d) *A public agency shall establish, for business days when it does*

1 *not maintain regular office hours, reasonable hours when persons may*
2 *inspect and obtain copies of the agency's records. The public agency*
3 *may require that any person desiring to inspect or obtain copies of the*
4 *agency's records during such hours so notify the agency, but such notice*
5 *shall not be required to be in writing and shall not be required to be*
6 *given more than 24 hours prior to the hours established for inspection*
7 *and obtaining copies.*

8 *(e) Each official custodian of public records shall designate such*
9 *persons as necessary to carry out the duties of custodian under this act*
10 *and shall ensure that a custodian is available during regular business*
11 *hours of the public agency to carry out such duties.*

12 *(f) Each public agency shall provide, upon request of any person,*
13 *the following information:*

14 *(1) The principal office of the agency, its regular office hours and*
15 *any additional hours established by the agency pursuant to subsection*
16 *(c).*

17 *(2) The title and address of the official custodian of the agency's*
18 *records and of any other custodian who is ordinarily available to act on*
19 *requests made at the location where the information is displayed.*

20 *(3) The fees, if any, charged for access to or copies of the agency's*
21 *records.*

22 *(4) The procedures to be followed in requesting access to and*
23 *obtaining copies of the agency's records, including procedures for giving*
24 *notice of a desire to inspect or obtain copies of records during hours*
25 *established by the agency pursuant to subsection (c).*

26 *(g) (1) Except for requests of summary data compiled from*
27 *information submitted by multiple criminal justice agencies or as*
28 *otherwise provided by law, requests for records submitted to the central*
29 *repository or any other repositories supporting the criminal justice*
30 *information system which are maintained by the Kansas bureau of*
31 *investigation pursuant to K.S.A. 22-4704 and 22-4705, and amendments*
32 *thereto, shall be directed to the criminal justice agency from which the*
33 *records originated.*

34 ~~(h)~~ *(2) As used in this section subsection, the terms "central*
35 *repository," "criminal justice agency" and "criminal justice*
36 *information system" have the same meanings as defined in K.S.A. 22-*
37 *4701, and amendments thereto.*

38 *(h) Requests for records defined as "files" pursuant to section 1, and*
39 *amendments thereto, submitted to a state or local law enforcement agency*
40 *or governmental agency shall be directed to the state or local law*
41 *enforcement agency or governmental agency that made, maintained or*
42 *kept such files, as required by section 1, and amendments thereto.*

43 *Sec. 3. K.S.A. 2016 Supp. 48-3602 is hereby amended to read as*

1 *follows: 48-3602. (a) The chief law enforcement executive for any law*
2 *enforcement agency, ~~or~~ such executive's designee, the secretary of*
3 *corrections or the secretary's designee may request assistance from a law*
4 *enforcement agency or a department of corrections of another*
5 *jurisdiction, including a jurisdiction located outside the state of Kansas,*
6 *but within the United States.*

7 *(b) If a law enforcement officer makes an arrest or apprehension*
8 *outside such officer's jurisdiction, the offender shall be delivered to the*
9 *first available law enforcement officer who is commissioned in the*
10 *jurisdiction in which the arrest was made. The officer making the initial*
11 *arrest or apprehension shall assist in the preparation of any affidavits*
12 *filed with the complaint or based on other evidence that there is probable*
13 *cause to believe that both a crime has been committed and the defendant*
14 *has committed such crime.*

15 *(c) For the purposes of liability, all members of any political*
16 *subdivision or public safety agency responding under operational*
17 *control of the requesting political subdivision or public safety agency are*
18 *deemed employees of such responding political subdivision or public*
19 *safety agency and are subject to the liability and workers' compensation*
20 *provisions provided to them as employees of their respective political*
21 *subdivision or public safety agency. Qualified immunity, sovereign*
22 *immunity, official immunity and the public duty rule shall apply to the*
23 *provisions of this section as interpreted by the federal and state courts of*
24 *the responding agency. The Kansas tort claims act, K.S.A. 75-6101 et*
25 *seq., and amendments thereto, and the Kansas workers compensation*
26 *act, K.S.A. 44-501 et seq., and amendments thereto, shall be interpreted*
27 *consistent with the provisions of this section.*

28 *(d) Nothing in this section shall be construed to limit the actions of*
29 *law enforcement officers or agencies conducted pursuant to K.S.A. 19-*
30 *828, and amendments thereto.*

31 *(e) The provisions of article 24 of chapter 22 of the Kansas Statutes*
32 *Annotated, and amendments thereto, and K.S.A. 21-5220 et seq., and*
33 *amendments thereto, are applicable to any law enforcement officers*
34 *from jurisdictions located outside the state of Kansas, but within the*
35 *United States who are acting pursuant to a request made under this*
36 *section.*

37 *(f) For purposes of this section, the term "law enforcement officer"*
38 *shall have the same meaning as that term is defined by K.S.A. 74-5602,*
39 *and amendments thereto, or a law enforcement officer who has obtained*
40 *a similar designation to one described in K.S.A. 74-5602, and*
41 *amendments thereto, in a jurisdiction outside the state of Kansas, but*
42 *within the United States.*

43 Section 1. *Sec. 4.* K.S.A. 2016 Supp. 74-5605 is hereby amended to

1 read as follows: 74-5605. (a) Every applicant for certification shall be an
2 employee of a state, county or city law enforcement agency, a municipal
3 university police officer, a railroad policeman appointed pursuant to
4 K.S.A. 66-524, and amendments thereto; an employee of the tribal law
5 enforcement agency of an Indian nation that has entered into a tribal-state
6 gaming compact with this state; a manager or employee of the horsethief
7 reservoir benefit district pursuant to K.S.A. 2016 Supp. 82a-2212, and
8 amendments thereto; or a school security officer designated as a school
9 law enforcement officer pursuant to K.S.A. 72-8222, and amendments
10 thereto.

11 (b) Prior to admission to a course conducted at the training center or
12 at a certified state or local law enforcement agency, the applicant's
13 appointing authority or agency head shall furnish to the director of police
14 training and to the commission a statement certifying that the applicant has
15 been found to meet the minimum requirements of certification established
16 by this subsection. The commission may rely upon the statement of the
17 appointing authority or agency head as evidence that the applicant meets
18 the minimum requirements for certification to issue a provisional
19 certification. Each applicant for certification shall meet the following
20 minimum requirements:

21 (1) Be a United States citizen;

22 (2) have been fingerprinted and a search of local, state and national
23 fingerprint files made to determine whether the applicant has a criminal
24 record;

25 (3) not have been convicted of a crime that would constitute a felony
26 under the laws of this state, a misdemeanor crime of domestic violence or
27 a misdemeanor offense that the commission determines reflects on the
28 honesty, trustworthiness, integrity or competence of the applicant as
29 defined by rules and regulations of the commission;

30 (4) have graduated from a high school accredited by the Kansas state
31 board of education or the appropriate accrediting agency of another state
32 jurisdiction or have obtained the equivalent of a high school education as
33 defined by rules and regulations of the commission;

34 (5) be of good moral character sufficient to warrant the public trust in
35 the applicant as a police officer or law enforcement officer;

36 (6) have completed an assessment, including psychological testing
37 approved by the commission, to determine that the applicant does not have
38 a mental or personality disorder that would adversely affect the ability to
39 perform the essential functions of a police officer or law enforcement
40 officer with reasonable skill, safety and judgment;

41 (7) be free of any physical or mental condition which adversely
42 affects the ability to perform the essential functions of a police officer or
43 law enforcement officer with reasonable skill, safety and judgment; and

1 (8) be at least 21 years of age.

2 (c) The commission may deny a provisional or other certification
3 upon a finding that the applicant has engaged in conduct for which a
4 certificate may be revoked, suspended or otherwise disciplined as provided
5 in K.S.A. 74-5616, and amendments thereto. When it appears that grounds
6 for denial of a certification exist under this subsection, after a conditional
7 offer of employment has been made to an applicant seeking appointment
8 as a police officer or law enforcement officer, the applicant's appointing
9 authority or agency head may request an order from the commission to
10 determine whether a provisional certification will be issued to that
11 applicant.

12 (d) As used in this section, "conviction" includes rendering of
13 judgment by a military court martial pursuant to the uniform code of
14 military justice, by a court of the United States or by a court of competent
15 jurisdiction in any state, whether or not expunged; and any diversion *or*
16 *deferred judgment* agreement entered into for a misdemeanor crime of
17 domestic violence *or a misdemeanor offense that the commission*
18 *determines reflects on the honesty, trustworthiness, integrity or*
19 *competence of the applicant as defined by rules and regulations by the*
20 *commission* and any diversion agreement *or deferred judgment* entered
21 into on or after July 1, 1995, for a felony.

22 Sec. ~~2~~ 5. K.S.A. 2016 Supp. **45-220, 48-3602 and 74-5605** ~~is~~ **are**
23 hereby repealed.

24 Sec. ~~3~~ 6. This act shall take effect and be in force from and after its
25 publication in the statute book.