

Testimony in Opposition of House Bill 2424

House Committee on Judiciary

Presented by
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The Kansas Highway Patrol (KHP) appreciates this opportunity to provide written testimony in opposition of House Bill 2424. We respectfully request the Committee consider our agency's concerns. This bill would affect the investigation of officer-involved deaths. We oppose this bill for the following reasons.

First, the absence of a lengthier timeline for implementation of this bill's required policies would create difficulties for law enforcement agencies. As the bill currently stands, these policy requirements would go into effect immediately upon this bill's publication in statute. An established date further from the publication of this bill would allow the necessary time for agencies to meet these requirements more effectively.

Second, the requirement of the publication of a full report once the County or District Attorney has cleared the officer involved may introduce sensitive, false, or misleading evidence to the public. These reports are investigative criminal records. They would contain video, photos, and raw case information such as statements from victims, suspects, and witnesses. Often these statements are made shortly after the incident while still under the stress of the event. They can also be of questionable credibility. Assessing the relative weight of the evidence as well as the credibility of the evidence is one of the key responsibilities of our judicial system. Publishing raw reports into the public eye would potentially introduce false or misleading evidence into the public discussion.

Releasing these reports to the public could also make witnesses or other individuals with relevant information reluctant to come forward and speak with investigators. The Kansas Supreme Court has commented on this matter in the context of deciding whether criminal investigative records should be open to the public under the Kansas Open Records Act:

"Criminal investigation files are sensitive. Raw investigative files nearly always include the names of many innocent people. Where the files are open to public scrutiny, the potential for injury is great. In addition, if criminal investigation files are open, many people with information which might lead to a resolution of the investigation will refuse to disclose such information. Investigations will be badly hampered. Thus, only under very restricted circumstances may the district court require disclosure."
Harris Enterprises, Inv. v. Moore, 241 Kan. 59 (1987)

In 2000, this concern was again discussed, but by the Kansas Court of Appeals:

"The legislative intent behind the criminal investigation exception to the Kansas Open Records Act is to protect innocent persons whose names might be involved in an investigation, either as possible suspects or as informants." *Seck v. City of Overland Park*, 29 Kan. App.2d 256.

Third, the requirement of an outside agency conducting the investigation may be complicated by the possibility of poor inter-agency relationships. The law enforcement agency involved in the event will have its greatest interest in its public perception after the release of the investigatory report. Yet, it is the investigating agency that is charged with the responsibility of releasing the report to the public. This process could be undermined or impaired between agencies with a

deficient cooperative dynamic. If such a report were to be required to be published, a solution to this issue would instead require the County or District Attorney reviewing the investigation to release the report.

Fourth, the public release of a report may cause pretrial publicity concerns in events involving more than a single suspect. Officer-involved deaths are not always a one-on-one encounter between a law enforcement officer and a lone suspect. Often there are several suspects at the scene taken into custody and charged with criminal offenses. A released report may cause pretrial publicity issues for the surviving suspects as their cases proceed through the judicial system.

And fifth, the requirement of the release of the entire report is complicated by the expiration of K.S.A. 45-254 which considers every audio or video recording made and retained by law enforcement using a body camera or vehicle camera a criminal investigation record. Should the Legislature choose to review and reenact the provisions of K.S.A. 45-254 by July 1, 2021, a subcategory of video that is released to the public would be created while the vast majority of other video would remain closed. This could hurt police-public relations in certain situations where video is not released to the public simply because the suspect did not die of their wounds. It could be confusing to the media and the public as to why some videos are released, and some are not.

With these issues considered, House Bill 2424 does include a positive aspect of note regarding the permitting of a parallel administrative investigation. This ability is useful in cases where the actions of the involved officer are clear, serious violations of agency policy. With current widespread use of video technology, this is something an agency can often determine without waiting for the completion of the criminal investigation. In some cases, conducting a parallel administrative investigation may help avoid the negative public perception of what can be a lengthy period of paid leave for the officer involved.

In conclusion, we oppose House Bill 2424 on the grounds that its requirements would be enforced too quickly for effective implementation, that publicized reports could release sensitive, false, or misleading information, that relationships between law enforcement agencies would create difficulties, that in cases of multiple suspects, pretrial publicity concerns may arise, and that police-public relations could be diminished when only select videos would be released. The Kansas Highway Patrol recognizes the need for transparency and communication to inform the public of such tragic and sensitive events as officer-involved deaths. These incidents deserve our greatest attention and diligence in upholding the rights of every party involved or concerned. However, House Bill 2424 creates several problems for law enforcement, the judicial system, and the public. We sincerely thank members of this committee for their consideration of our testimony.

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