



February 14, 2020

TO: Rep. Fred Patton, Chair, House Judiciary Committee
FROM: Ron Keefover, President of the Kansas Sunshine Coalition for Open Government
RE: Opponent Written Testimony of HB 2667

Mr. Chairman, Members of the House Judiciary Committee:

It seems more than a bit incongruent for me as an open government devotee to offer testimony in opposition to HB 2667, a bill I believe at its heart is designed to shed more light into police involved shootings, which result in death. I do thank Reps. Croft and Resman for introducing the measure.

However, the disconnect we at the Kansas Sunshine Coalition for Open Government have in HB 2667 as introduced is the Sec. 1(2)(e) that specifies only “a written summary report summarizing the investigative report” is to be released upon the prosecutor’s determination that is no basis for charges to be filed. Our concern is that whenever a secondary source is made available—the summary—rather than the primary source—the investigation records themselves—there is much concern that the full and truthful account may not have been presented in the summary.

We believe a truly transparent process in these matters would be one in which the independent investigative agency’s report is opened for inspection once it is completed and the prosecutor has determined there is no basis for filing any criminal complaint. A mere summary of that report could only lead to further questions and community turmoil, based on the belief that the summary could obtain skewed or even an inaccurate recitation of the investigators’ report. Many could perceive the “report summary” as further shielding the true facts of the shooting behind the “thin blue line” that is the common perception of many despite this day and age of modern professional police work.

One suggested resolution of this issue, if a suitable amendment cannot be made (and I would be happy to submit a draft amendment) during the legislative process, could be a referral to the Kansas Judicial Council for study this summer with a report for the next session of the Legislature. If such a procedure is chosen, I would be happy to make myself available as a Coalition representative to meet with the Judicial Council subcommittee that is assigned the task. Thank you for your consideration of this testimony.

KANSAS SUNSHINE COALITION FOR OPEN GOVERNMENT
3770 SW Stonybrook Drive • Topeka, KS 66610
ron.keefover@gmail.com (785) 217-3878

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Dear Rep. Patton and members of the House Judiciary Committee:

Thank you for the opportunity to submit this testimony in opposition to HB 2667.*

This bill would provide for public disclosure of information related to a prosecutor's decision not to criminally charge a law enforcement officer who takes someone's life. However, the bill limits disclosure in a way that would not effectively serve the public interest. Indeed, the veracity of information disclosed under this bill would be open to doubt. As a result, the disclosure would not adequately address a community's suspicions when a law enforcement officer takes someone's life and is not criminally charged.

Basically, HB 2667 requires that outside investigators of an officer-involved death write and submit a report to a County/District Attorney. Then, if the officer involved in the death is not criminally charged, the County/District Attorney would prepare a summary of the outside investigators' report and disclose the summary publicly, with any necessary redactions.

HB 2667 does not include a requirement that the County/District Attorney's summary of the outside investigators' report be accurate. Thus, the bill has no provision to deter a County/District Attorney from being subjective, self-serving and erroneous in preparing a summary to be disclosed. In HB 2667, accuracy is only required of the outside investigators when they report on an officer-involved death.

Even if HB 2667 were to require that the County/District Attorney accurately summarize the outside investigators' report, the public still would have no way to verify its accuracy. The outside investigators' report itself would remain closed under HB 2667.

Perhaps the bill could be amended to require disclosure of the outside investigators' report on an officer-involved death, with any necessary redactions. Then, the same report that serves as the basis for a decision not to prosecute would, once disclosed, serve as the public's basis for assessing that decision.

Such transparency would significantly aid Kansas law enforcement in gaining and maintaining public trust.

Respectfully,

Mike Kautsch

Mike Kautsch
Lex Lumina LLC
PO Box 2303
Lawrence, KS 66044

* Biographical note: I was on the faculty of the University of Kansas School of Law until retiring last year. Before then, I taught classes full-time in First Amendment law and related subjects. Now I only teach occasionally on a part-time basis. I remain active in assessing proposed legislation that affects open government and expressive freedom. I do so through a public interest organization I formed, Lex Lumina LLC, and as a volunteer in other organizations. The opinion I express in this testimony is entirely my own and is not to be taken, in any way, as representing views or positions of the University of Kansas or the School of Law on any matter.