



TO: House Committee on Corrections and Juvenile Justice
FROM: City of Olathe, Ron Shaver, City Attorney and Chad Sublet, City Prosecutor
DATE: March 6, 2024
SUBJECT: Written Only Opposition to SB 318 (City Attorney recording review provision only)

The City of Olathe opposes the provision in Section 1 of Senate Bill 318 that would require the City Attorney to review certain recordings. This provision is unclear and does not appear to fit within the existing framework established by the Code for Municipal Courts. It also has the potential to significantly increase the number of prosecutors required within a city attorney's office.

The provision reads:

The city attorney shall inspect and review every audio and video recording relevant to the case that is presented or provided to the city attorney by the accused person or the accused person's counsel, including, but not limited to, a recording made and retained by law enforcement using a body camera or vehicle camera as defined by K.S.A. 45-254, and amendments thereto.

What is meant by the phrase "presented or provided"? What is the difference between "presenting" and "providing"? Does this mean only evidence that the accused presents at trial, or provides to the prosecutor after arraignment? Or does it mean any evidence that the accused person could possibly present to the prosecutor at any time, regardless of the stage of the process? If the latter, then this would significantly expand the time and personnel required by a city prosecutor's office.

Often, an accused person will want a prosecutor to watch a video or audio recording at arraignment, but arraignment within the Code for Municipal Courts is intended only to inform the accused person of the substance of the charge and to allow the accused to plead. This week, we have 642 cases set for arraignment, warrant, or failure to appear dockets. If we were required to review video or audio within these dockets, our Municipal Court would come to a complete stop.

If a person tells us at arraignment that they have a relevant video or audio recording, we inform them that if they don't believe they did anything wrong, we can set the case for trial. Trial is the time established by the Code for Municipal Courts for evidence to be presented, regardless of the source. In preparing for trial, if any audio or video recordings (regardless of whether they were provided by the accused or not) show that the accused did not commit the offense, we will dismiss the case. Additionally, we inform the accused that they can continue to receive an amendment or diversion up until the trial, so they continue to have that opportunity even after we have reviewed any evidence they have provided to us during discovery, and even if we have decided after that review to continue prosecution.

Prosecutors are imputed with the same knowledge or evidence that is in the possession of law enforcement, including the law enforcement recordings referenced by this provision. If each of the 642 cases on our arraignment, warrant, or failure to appear dockets this week had 15 minute of law enforcement video recordings, we would be required to review 160 hours of video before those dockets. This would require all four of our prosecutors to be doing nothing but reviewing audio and video in a given week – and this estimate is very conservative, as many cases may have hours of law enforcement video.

This provision was added to Senate Bill 318 by an amendment in the Senate Committee of the Whole, without a hearing on its substance. Now that you have heard from us and other conferees regarding the very real problems with the substance of this provision, we ask that you amend Senate Bill 318 to remove it.