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Neutral Testimony on House Bill 2678

**Presented to the House Judiciary Committee
By Kansas Attorney General Derek Schmidt**

February 18, 2016

Mr. Chairman, members of the Committee:

Thank you for this opportunity to present neutral testimony on House Bill 2678.

The Office of the Attorney General was not involved in the crafting of this bill and learned of its existence only when a fiscal note request came through. So we have not had the opportunity to reflect at length upon it in detail, but we have several observations:

First, it is not clear what problem this bill is intended to solve. Currently, when there is an in-custody death or an officer-involved shooting there are procedures in place to ensure proper review and investigation. I am not aware that those procedures are deficient.

Second, the attorney general's office does not currently have specialized expertise in law enforcement officer professional standards required to investigate and prosecute cases such as these. If this bill were to pass, we could hire appropriate personnel, but it is likely that would come at a significant cost. We estimate this bill would apply in about 30 cases each year in Kansas, and that will require significant new specialized capacity.

The observations above speak to whether the policy proposed by this bill is necessary or appropriate. If the legislature determines that it is, and thus decides to proceed with this bill, then we respectfully suggest the measure needs significant changes to its language and structure. For example:

- It is unclear why, in this context, there need to be statutory requirements that a criminal investigation involve certain types of information-gathering. That is odd.
- It is unclear why this statute would require convening a grand jury in these cases. Under Kansas law, the use of a grand jury generally is discretionary, not mandatory. Moreover, the convening of a grand jury generally precedes the determination that a prosecution is warranted, but in this bill (oddly) that determination is a condition precedent to convening the grand jury.

- The various references to the attorney general having the powers of a “prosecuting attorney” are peculiar. By law, the attorney general is a “prosecuting attorney” and merely repeating that assertion here in specific circumstances seems redundant and devoid of any legal meaning. See, e.g., K.S.A. 22-2202(q). It appears likely the authors of this bill mean to say the attorney general shall have the powers of a “county or district attorney,” but that is not what the bill says. It is unclear under the bill as currently drafted what powers it is intended to convey upon the attorney general.

Thank you for this opportunity to provide information about this legislation. In its current form, and without the new resources necessary to do this job properly, we have serious concerns that it would be unworkable.

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