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MEMORANDUM

To: Senate Committee on Judiciary
From: Jenna Moyer, Assistant Revisor of Statutes
Date: February 14, 2018
Subject: SB360 – Amending open records laws relating to copies of public records and disclosure of law enforcement recordings using a body camera or vehicle camera.

SB 360 amends requirements for law enforcement agencies to release audio or video recordings under open records law.

Section 1 amends K.S.A. 45-219, which is the statute that governs procedures for copying of public records. The first change strikes language allowing public agencies to require written requests and prepayment of fees and replaces it with language that only allows agencies to require prepayment for copying fees. The second change is for audio or visual items. Current law provides that a public agency is not required to copy audio or visual records unless the records were shown or played at a public meeting. This discretionary copying is changed to mandatory copying of audio or visual records if the public agency has the necessary duplication equipment or if the audio or visual item was shown or played at a public meeting.

Section 2 amends K.S.A. 45-254, which is the statute governing disclosure of law enforcement recordings from body or vehicle cameras. Current law requires a law enforcement agency to allow certain persons to listen to or view law enforcement recordings. Subsection (c) specifies who may make such a request, which currently includes the subject of the recording, such person's parent or legal guardian, their attorney, or the heir at law or executor of a decedent who is the subject of the recording. This bill adds that an individual with a written release from the next of kin of a decedent who is the subject of the recording is also allowed to make a request under subsection (b). A law enforcement agency shall allow any of the persons listed in subsection (c) to listen or view the recording within 24 hours after making the request.

Subsection (d) would require disclosure of law enforcement recordings within 30 days after a request is made by any person, if the recording depicts or describes: (1) the discharge of a firearm by a law enforcement officer in the course of duty; or (2) the use of force by a law enforcement officer resulting in great bodily harm or death.

Subsection (e) would require the law enforcement agency to redact or obscure certain portions of a recording, including a recording that: (1) depicts death or severe violence against a person, unless the death or act was caused by a law enforcement officer; (2) depicts nudity or sexual contact; (3) reveals the identity of a confidential source, undercover agent or confidential investigative techniques; (4) endangers the life or safety of any person; (5) reveals the identity of a victim of sexual offense or a minor; (6) includes confidential medical or personal information; or (7) reveals the name or license plate number of a person not arrested, cited or charged. This requirement to redact or obscure shall not apply to requests made by any person described in subsection (c).

Subsection (f) allows a law enforcement agency to redact or obscure certain portions of recordings before disclosure that reveals the identity of a law enforcement officer who is subject to an ongoing internal investigation as a result of the events depicted in the recording. A law enforcement agency shall not redact the identity of a law enforcement officer after the internal investigation has concluded or final disciplinary action has been rendered. Additionally, if the internal investigation lasts longer than 270 days, law enforcement recordings that were not disclosed, redacted or obscured under this section shall be made available for public inspection and copying.

Subsection (g) provides a definition of “great bodily harm” and “heir at law” as used in this section.