

To: Senate Judiciary Committee

From: Amanda L. Stanley, General Counsel

Date: February 13, 2018

RE: Testimony in Opposition to SB 360

I want to thank Chairman Wilborn and the Committee members for allowing the League of Kansas Municipalities the opportunity to provide testimony in opposition to SB 360.

While our members understand the intense interest of the public in body camera footage, we have some serious concerns about the proposed legislation.

Section 1 of the proposed legislation eliminates the language in K.S.A. 45-219(a) allowing a city to require a written request when an individual requests copies of any public record to which such person has access under the Kansas Open Records Act (KORA). While this proposed legislation is directed at body camera footage, this change would impact all open record requests. Any change to the KORA needs to be carefully considered in conjunction with the rest of the Act. By eliminating the language allowing for a written request, it is likely a court would interpret this change as legislative intent to prohibit the requiring of a written request even if the new language of the statute is silent as to whether a written request may be required. It is unclear how this change would be interpreted in conjunction with K.S.A. 45-220 which allows for a written request when an individual asks to inspect a public record. This raises the question of when is a request a request for inspection versus only a request for copies. Are these requests one in the same? For example, if a citizen made a record request for copies of all city council agenda packets for the last year, which provision would apply? By asking for copies, the individual is essentially asking to inspect the records but only via a request for copies. It becomes unclear when a written request could be required. My assumption is the intent of this change is to remove redundant language from the KORA, and K.S.A. 45-220(b) which allows for a written request for

inspection of public records to control in all situations; however, I would ask that this be clarified.

Prohibiting a city from requiring a written request can lead to confusion on when the request was received, what is actually being requested, and where the information is to be provided. Requiring a written request is not unduly burdensome to the public. While a written request can be required under the KORA, it cannot be required in any particular format. We have member cities who have filled requests submitted on the back of utility bills. Eliminating the ability to require a written request will lead to unnecessary confusion and unintended failures to comply with the statute. When this change is combined with the new 24-hour requirement in K.S.A. 45-252(c) in Section 2 of the bill, this could become especially problematic.

In Section 2 of the bill, the language changes in K.S.A. 45-254(c)(4) are especially concerning. It requires the agency to allow viewing of the recording by an individual who has secured a written release from the next of kin of a decedent, when the decedent is a subject of the recording. There is nothing in this provision which would prohibit an individual, such as a reporter, from utilizing this provision and then recording the video with their cell phone. Additionally, while K.S.A. 45-254(e) of the bill does mandate redaction, K.S.A. 45-254(e)(2) states that redaction cannot occur if the video is shown pursuant to K.S.A. 45-254(c). There are valid reasons why redaction might need to occur prior to showing the video to the family, or to anyone the family has given a signed consent.

While Section 2 does allow for the redaction of the video when not released pursuant to K.S.A. 45-254(c), redaction is expensive. About a year ago the City of Ottawa explored the purchase of video redaction software and found the software to be approximately \$10,000. This figure does not consider the training and any annual maintenance fees charged by the vendor. The biggest unknown is the personnel costs associated with review and redaction (if needed) before a video is released. The costs would depend on the length of the video, the amount of redaction needed, whether outside legal counsel is needed, etc.

The City of Overland Park, has also raised concerns regarding the 30-day release requirement and the time-consuming nature of video redaction. Even while using software, someone will need to go frame by frame to ensure everything was redacted appropriately. Keep in mind there are 30 frames per second. Once multiple body cameras and in-car

cameras at the scene are considered, it is likely additional staffing will be needed to handle these requests.

Finally, our members have raised concerns generally about the time frames for releasing or allowing the family to view video. The police officers involved also have due process rights. In officer involved shooting cases, the officers are investigated as suspects to determine if their actions are criminal. There should not be a rush to judgement by the family, media, or general public. The facts must be determined first through a thorough investigation. Video is only one piece of the evidence and may not tell the full story of what occurred. With family being able to view video within 24 hours, in most cases, this means the officer(s) involved in the shooting or use of force have not even been interviewed by the detectives investigating the criminal case much less anyone from internal affairs which is a separate administrative investigation.

Thirty days is too soon in many of these cases. In some straight forward cases, perhaps the criminal investigation into the officer's actions could be decided by the District Attorney within 30 days, but certainly not in all of them. Everyone, including police officers and those they use force against, have constitutional protections and rights and the investigations into those encounters should not be compromised for the sake of public interest. What the law enforcement agency, the public and the family should want is to get to the facts first. This takes a significant amount of time. Rarely are officer involved shooting cases (both criminal investigations and internal affairs investigations) resolved in 30 days. It simply takes longer.

Finally, our members question the wisdom in Section 2 of amending K.S.A. 45-254(f)(2)(B) to require automatic release of the footage if the investigation lasts for longer than 270 days. It would not advance the public interest in any way to blindly release a video or audio recording if the investigation is still open. In fact, it may damage the right to a fair trial, assuming anyone is eventually arrested and charged. This requires discretion.

While our members understand, and even share, concerns that there needs to be more direction toward uniformity in the way video and audio are handled across the state, we highly recommend these matters receive a thorough review by all interested parties which should include the law enforcement, city management, city attorneys, and other judicial stakeholders who are asked to protect the public safety in our Kansas communities on a daily basis.

Because of our many concerns with the current language of this bill, we respectfully ask this Committee to not pass this bill to the full Senate for its consideration.