



Kansas County & District Attorneys Association

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To: Chairman Wilborn and Members of the Senate Judiciary Committee
From: Kim Parker, Prosecutor Coordinator
Kansas County and District Attorneys Association
Date: February 13th, 2018
Re: Neutral Testimony for Senate Bill 360

Good Morning Chairman Wilborn and Committee Members,

Thank you for the opportunity to provide neutral testimony for SB360. I am addressing you on behalf of the Kansas County and District Attorney's Association and the many Kansas prosecutors they represent.

Kansas prosecutors are obligated to protect and serve the public safety and public interest and as such understand the need for transparency in government and to keep the public informed. The ability of body cameras to objectively memorialize interactions between police and citizens promises to provide many enhancements to the justice system. Public policy discussions regarding access to the video recordings must balance issues of cost, privacy and one's right to a fair trial.

SB360 amends the Kansas Open Records Act with a focus on the information held on law enforcement body and vehicle cameras. Our interest in this amendment surrounds the need to ensure that criminal investigation records continue to be **excepted** and that the information contained in body or vehicle camera footage is included in that exception. This is necessary to protect the safety of our communities and ensure that criminally charged defendants receive a fair and just trial. This rises above all concerns, as it is the absolute right of an accused to receive a fair trial. Supreme Court Rule 3.6 unequivocally states that a lawyer "shall not" disseminate information that "will have a substantial likelihood of materially prejudicing an adjudicative proceeding." Rule 3.8 Special Responsibilities of a Prosecutor, states that "*except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, [shall] refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and [shall] exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extra judicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this rule.*"

A video, like a DNA report, is evidence. Public trials are where an accused, with counsel, confronts and challenges evidence –including video--he or she has previously been provided in discovery per Brady v. Maryland, 373 U.S. 83 (1963) and K.S.A. 22-3212.

If a carefully restrained release of a still photo or short video clip can ease community tension and add transparency without impacting the right to a fair trial, then “*a legitimate law enforcement purpose*” may be served (Rule 3.8). When appropriate, this approach can balance legitimate calls for transparency against the litany of Constitutional due process rights uniquely granted to criminal defendants: right to silence, double jeopardy, right to counsel, speedy trial, the presumption of innocence, *et cetera*. As policy makers wrestle with how to set access, law enforcement professionals must continue to follow the ethical rules and constraints long present in our law. Appellate courts will ultimately judge whether transparency can be achieved without sacrifice to fairness.

Anytime law enforcement is involved in the discharge of a firearm or use of force that causes great bodily harm or death, there is necessarily a criminal investigation which often extends beyond or 30 days and may extend beyond 270 days. The public release of the video footage could critically impede or impair the ability to prosecute and protect the rights of a defendant to a fair trial.

In addition, there are other caveats that we want to bring to your attention;

1. Local law enforcement agencies are not **currently** equipped or staffed to comply with the copy and access (real time) demands of SB360. Maintaining hours of video will be expensive, though as more departments add cameras, vendor competition should reduce cost. Cost analysis must also account for staff hours spent redacting video to protect the privacy of individuals.
2. Law enforcement officers will be challenged to determine the validity of requests by individuals identified themselves as next of kin or individuals claiming to have releases from next of kin. The determination of heirs and next of kin or the validity of a release document is more properly one for a court of law.

Thank you for your consideration.

Kim T Parker
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