

Law Enforcement Background Investigation (SB180)

Effective July 1, 2018

Links: [SB180](#) [Legislative Summary of SB180](#)

Prepared by Ed Klumpp, eklumpp@cox.net, June 25, 2018

Introduction

This bill was introduced by our associations in 2017 with the intentions of improving our ability to obtain complete information when conducting background investigations for law enforcement positions on applicants who are either currently working or have worked in the past for another Kansas law enforcement agency. The second goal of the bill was to protect the agency providing the information from liability and to offer reasonable protection of the information provided. It is modeled after a Colorado statute.

Hiring Agency Responsibilities

- The applicant must sign a written waiver signed by the applicant that
 - Explicitly authorizes each state or local law enforcement agency or governmental agency that has employed the applicant to disclose the applicant's files to the hiring agency, [NOTE: I believe the term "explicitly authorizes" is intended to require a separate release for each former or current agency specifically naming that agency], and
 - Releases each agency that employed the applicant from any liability related to the use and disclosure of the files.
- An applicant who refuses to execute the waiver shall not be considered by the hiring agency.
- A copy of the waiver shall be provided to each agency along with the request for information.
- The hiring agency is prohibited from disclosing the information received under this law, except as necessary for such agency's internal hiring processes, or in a negligent hiring civil action.
- The files are not otherwise subject to discovery, subpoena, or other process directed toward the hiring agency obtaining the files.

Previous Employer Responsibilities

- To allow a background investigator from a hiring agency to review personnel files of the applicant, including all performance reviews or other files related to job performance, commendations, administrative files, grievances, previous personnel applications, personnel-related claims, disciplinary actions, internal investigation files, suspensions, investigation-related leave, documents concerning termination or other departure from employment, all complaints, and all early warning information.
- To disclose the files to the hiring agency within 21 days of receiving the request either by providing copies to the hiring agency or allowing the hiring agency to review the files at the office of the agency holding the records. Providing copies is at the discretion of the agency holding the records, not the hiring agency.
- The bill establishes an exception if the agency is prohibited from providing the files pursuant to a binding nondisclosure agreement executed before July 1, 2018, to which such agency is a party. However, agencies must disclose an applicant's files if such files

are subject to a binding nondisclosure agreement executed on or after July 1, 2018, but disclosure is limited to only those files necessary to determine an applicant's qualifications and fitness for performance of a law enforcement officer's duties.

- The agency revealing the records agencies may redact personally identifiable information of persons other than the applicant in files disclosed.

Liability

- An agency or the employees of the agency releasing the records are not be liable for complying with the provisions of this section in good faith or participating in an official oral interview with an investigator regarding the applicant.

Open Records

- The law provides the files constitute a record of the agency that made, maintained, or kept the files for the purposes of the Kansas Open Records Act (KORA) and are not subject to a KORA request directed toward the hiring agency.
- Adds a provision to KORA specifying a request for records defined by the bill as "files" that were submitted to an agency must be directed to the agency that made, maintained, or kept such files.

The author of this document is not an attorney and this is not legal advice. It is a summary of legislation passed in the 2018 Kansas legislative session and based on explanations, observations, and studies of the bill and related documents.

Always follows your agency policies and utilize your agency protocol to refer to your local prosecutors and agency attorneys for legal interpretations and application of case law.