

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

Held in Room 522, at the Statehouse at 3:30 P.M. on February 14, 1978.

All members were present except: Representatives Augustine and Heinemann, who were excused.

The next meeting of the Committee will be held February 15, 1978 at 3:30 P.M.

January 21, 1978

These minutes of the meeting held on and February 1, 1978 were considered, corrected and approved.


Chairman

The conferees appearing before the Committee were:

Representative Mike Meacham
Mr. Frank Gentry, Kansas Hospital Association
Major Elliott, Kansas Peace Officers Association
Mr. Bill Griffin, Attorney General's Office

The meeting was called to order by the Chairman who introduced Representative Mike Meacham to discuss House Bill 2154. Representative Meacham explained this particular bill was introduced last year, was reported favorably out of committee and then re-referred back to committee. In the interim, he explained, he had looked at the language and had discovered there should perhaps be an amendment. The intent, he stated, was to extend immunity to hospital medical personnel and others who are qualified to draw blood from alleged inebriated drivers. He explained that Mr. Art Griggs has proposed an amendment which was distributed

None (See Exhibit).

Mr. Frank Gentry of the Kansas Hospital Association appeared in support of the bill together with the proposed amendments. He explained the law as it now exists, according to his legal counsel, restricts the people authorized to draw blood to physicians or medical technicians. It is their desire to extend the privilege to registered nurses, licensed practical nurses, and any qualified medical technician.

Representatives of the Highway Patrol testified they supported the bill with the exception that they would like to be able to "direct" these individuals to draw blood rather than "request" them to do so. Representative Frey noted in his part of the country they have many transients and he has seen occasions where they request a certain type of test which is not available in that particular area. The Chairman inquired why the word was changed from direction to request and Representative Meacham stated that this is something the Highway Patrol and the Kansas Hospital Association will have to work out. Mr. Gentry explained that most of these procedures are done in a hospital and is ordered by a physician and that it was his impression that law enforcement officers should request and not order since they are not

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

physicians.

None Major Elliott of the Kansas Peace Officers Association testified in favor of the proposal and offered a printed statement. (See Exhibit).

Mr. Bill Griffin of the Attorney General's office appeared on House Bill 2525. Mr. Griffin explained this is a consumer protection bill and there have been occasions when lawsuits have been filed for private clients and which coincide with the lawsuit filed by the office of the Attorney General. He explained that it is not their desire to take any client from a private attorney but urged that this proposal would allow them to consolidate and cooperate in lawsuits. It would provide for notification of suits which had been filed in this area. After a period of questioning the Chairman suggested postponing further discussion.

The Chairman noted he had been asked to pass over House Bill 2639, which request was from proponents of the Bill.

The sub-committee on House Bill 2712 reported they are not yet ready to make a recommendation.

Representative Martin, Chairman of the sub-committee on House Bill 2326, submitted an amendment for the consideration by members of the committee. He urged their study for future consideration.

Representative Ferguson, Chairman of the sub-committee on House Bill 2711 presented a balloon amendment to be considered by the members of the Committee. He explained these amendments take into consideration certain things from House Bill 2147, and that the sub-committee had heard discussion and testimony from conferees; and that such suggestions had been incorporated into the amendment. Representative Ferguson offered a printed statement from the Kansas Bureau of Investigation (See Exhibit).

Representative Baker suggested that in expungement cases when you notify law enforcement agencies to strike certain records and send a copy of the petition to other individuals the whole process might be self defeating. Representative Hoagland inquired about the difference between annulment and expungement, and Mr. Art Griggs stated that annulment was intended for those individuals under 21 years of age. Representative Roth noted the interim committee raised the issue as to whether or not records should be destroyed or sealed. Representative Lorentz stated in cases of subsequent conviction he felt such records should be retained.

Representative Ferguson moved the amendment as appears

on page one of the balloon. Motion was seconded by Representative Roth. Representative Lorentz called attention to the same language on page 3, and suggested the motion should include that page as well. Representative Ferguson stated the same language also appears on line 112. Representative Hayes offered a substitute motion to retain the motion but to insert the amount of \$35.00 The motion was seconded by Representative Hoagland. Representative Hayes withdrew his substitute motion and Representative Ferguson withdrew his original motion. Representative Hurley moved conceptually to strike the language in Section 6 concerning the defendant's arrest, and the date, and in Section 7 striking reference to arresting agency; then back in Section 4 to strike all of Section 4. There was a great deal of discussion by members concerning other proposed amendments and they were directed to visit with Mr. Art Griggs about those concerns. By consensus it was agreed that these concerns would be incorporated into Representative Hurley's motion. The motion was seconded by Representative Ferguson and carried.

The Chairman stated Representative Baker has a sub-committee report and needed to leave the meeting, and asked to return to this particular subject.

Representative Baker offered a printed report (See Exhibit) concerning House Bill 3206 dealing with decisions of the Corporation Commission. He explained that sponsors of the two identical bills agreed to the changes in regard to appeals to the Court of Appeals. The amendment prescribes a deadline of 120 days in which the Court of Appeals may act before other action is taken. It was moved by Representative Baker that the proposed amendments with suggested punctuation be adopted. Motion was seconded by Representative Lorentz and after discussion motion carried.

It was moved by Representative Whitaker that House Bill 3206 be reported favorable as amended. The motion was seconded by Representative Lorentz and carried. It was moved by Representative Hayes and seconded by Representative Martin that House Bills 2851 and 2877 be reported adversely. Motion carried.

It was noted by Representative Martin that 17 other states have adopted similar legislation as contained in House Bill 2713. He moved that the bill be recommended for passage. Motion was seconded by Representative Frey and upon vote, carried.

The Chairman asked for a discussion on House Bill 2147 and pointed out he felt the interim committee had decided the bill was okay. Representative Ferguson stated he has asked the law enforcement people about the bill and they

favor it. He did note that in lines 27,28 and 29 it was suggested that the words "criminal justice" be inserted in lieu of "law enforcement". This language is defined by reference to Senate Bill 406. Mr. Griggs stated it would need to be published in the paper before it becomes law. The above amendments were moved by Representative Ferguson and seconded by Representative Hayes. Upon vote the motion carried. It was then moved by Representative Ferguson and seconded by Representative Stites that the bill as amended be passed. Motion carried.

The Chairman asked to return to House Bill 2711 and explained that some amendments had previously been adopted. It was moved by Representative Lorentz and seconded by Representative Hayes that the amendments shown on the first and third pages on the balloon, with stricken Section 4, Section 6 and Section 7 be adopted. Representative Hurley inquired if that would include the \$35.00. Representative Hayes and Lorentz agreed that the motion would incorporate the \$35.00. By consensus, the committee also agreed the motion should include information required to be contained in the petition as shown in Section 2. Upon vote the motion carried.

It was moved by Representative Ferguson and seconded by Representative Hayes that House Bill 2711 as amended be reported favorably. After considerable discussion motion carried by a majority.

The Chairman asked members to look at minutes for January 31 and February 1 and by consensus they were approved.

The Chairman asked for discussion on House Bill 2326. Representative Martin explained that if a defendant was found not guilty because of insanity and the patient is later found to be able to return to the community, it gives authority to the Court for some control over the patient for two years. (See Exhibit.) Representative Martin moved the balloon amendments as shown in the exhibit and further moved conceptually in lines 72 through 75 for consideration of the cost of proceedings which would include supervisory programs insofar as monitoring all activities, medication etc. The motion was seconded by Representative Roth and carried by a majority vote.

Representative Martin moved conceptual consideration on the previous page considering costs. The motion was seconded by Representative Hoagland and carried. It was then moved by Representative Martin and seconded by Representative Mills that the bill as amended be recommended favorably. On vote the motion carried.

The meeting was adjourned.

2-14

Summary of Testimony
Before the House Judiciary Committee
Kansas Legislature

House Bill No. 2154
By Representative Meacham

By Captain Enos Hadley
Kansas Highway Patrol
February 14, 1978

Appeared in support of the passage of HB 2154, with the exception of the ammendment in subsection (a).

We are appearing before the committee in support of HB 2154, with the exception of the word change in the latter part of subsection (a).

Our support of the amendments in subsection (b) and (c) is due in part to the civil and criminal protection they provide for the doctors, nurses, hospitals and law enforcement officers. The absence of such protection has impeded drinking driver enforcement efforts in the past.

Our objection to the word change in subsection (a) relates to its definition by the courts.

An arrest for the offense of driving while under the influence of intoxicating liquor, requires the arresting officer to comply with many definite procedures. These procedures have been established by our statutes and existing case law.

The sentence "the test shall be administered at the direction of the arresting officer" establishes such a procedure. The words "at the direction of" encompass several important and vital issues, two of which are:

- 1.) Only the arresting officer may direct a chemical test be administered. This excludes other officers who would not have firsthand knowledge of circumstances of the alledged violation.
- 2.) Places the selection of the type of test to be administered (breath, blood, urine or saliva) within the arresting officer's direction. Kansas case law has affirmed this point, time and again.

The rewording of subsection (a) from "direction" to "request" permits the shifting of the selection of the type of test to be administered from the arresting officer to the arrested party. If the arrested person is allowed to make this choice, it will have a detrimental effect upon the reasonable collection of evidence. All types of tests are not always available:

- 1.) There are several areas in our state where a blood test is impossible to have administered, or the medical personnel are unwilling to take the time from their other medical responsibilities to testify.
- 2.) Saliva tests, while easy to obtain, must be supported by complex expert testimony, which is not readily available.
- 3.) And urine tests require special administration and handling. Initial voiding, a thirty minute waiting period, an appropriate collection device and necessary observation of the giving of a sample — all contribute to an intolerable collection procedure.

For the arresting officer to continue to be effective in acquiring a usable chemical test from a person arrested for driving while under the influence of intoxicating liquor, the test must be of the arresting officer's choice, a test accessible at the time and location, and a test of which there is expert testimony available.

To attain our mutually desired objective of removing the driver who is under the influence from the highways of our state, your consideration of our testimony is sincerely appreciated.

HOUSE BILL No. 2711

By Special Committee on Judiciary—B

Re Proposal No. 39

12-7

0017 AN ACT relating to crimes; concerning the expungement of
0018 certain convictions; concerning certain traffic offenses and
0019 penalties; repealing K.S.A. 1977 Supp. 8-290, 12-4515, 21-4616
0020 and 21-4617.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. (a) Except as provided in subsection (b), any per-
0023 son who has been convicted of a violation of a city ordinance of
0024 this state may petition the convicting court for the expungement
0025 of such conviction if two or more years have elapsed since the
0026 person: (1) Satisfied the entire sentence imposed; or (2) was
0027 discharged from probation, parole or a suspended sentence.

0028 (b) In the case of a conviction for the violation of a city
0029 ordinance which would also constitute a violation of any of the
0030 items enumerated in subsection (a) of K.S.A. 1977 Supp. 8-285,
0031 and any amendments thereto, no person may petition for ex-
0032 pungement until five or more years have elapsed since the per-
0033 son: (1) Satisfied the sentence imposed; or (2) was discharged
0034 from probation, parole or a suspended sentence.

0035 (c) When a petition for expungement is filed, the court shall
0036 set a date for a hearing thereon and shall give notice thereof to the
0037 prosecuting attorney. Any person who may have relevant infor-
0038 mation about the petitioner may testify at the hearing. The court
0039 may inquire into the background of the petitioner and shall have
0040 access to any reports or records relating to the petitioner that are
0041 on file with the secretary of corrections or the Kansas adult
0042 authority.

0043 (d) At the hearing on the petition, the court shall order the
0044 petitioner's conviction expunged if the court finds:

2-14

The petition shall state: (1) The defendant's full name; (2) the full name of the defendant at the time of arrest and conviction, if different than (1); (3) the defendant's sex, race and date of birth; (4) the crime for which defendant was arrested; (5) the crime for which the defendant was convicted; (6) the date of the defendant's arrest and the date of the defendant's conviction; and (7) the identity of the arresting agency and the convicting court. In the district court there shall be a fifteen dollar (\$15) docket fee for filing a petition pursuant to this section and the provisions of subsections (b) and (c) of K.S.A. 60-2001 shall be applicable to such docket fee.

0045 (1) That the petitioner has not been convicted of a felony in
0046 the past two years and no proceeding involving any such crime is
0047 presently pending or being instituted against the petitioner;

and

0048 (2) that the circumstances and behavior of the petitioner war-
0049 rant the expungement;

0050 ~~(3) that the expungement is consistent with the public wel-~~
0051 ~~fare; and~~

0052 ~~(4) that the rehabilitation of the petitioner has been attained to~~
0053 ~~the satisfaction of the court.~~

0054 (e) When the court has ordered a conviction expunged, the
0055 petitioner shall be treated as not having been convicted of the
0056 crime, except that:

0057 (1) Upon conviction for any subsequent crime the conviction
0058 that was expunged may be considered as a prior conviction in
0059 determining the sentence to be imposed;

0060 (2) in any application for employment ~~as a law enforcement~~
0061 ~~officer, as defined by K.S.A. 1977 Supp. 22-2202,~~ the petitioner, if
0062 asked about previous convictions, must disclose that the convic-
0063 tion took place;

0064 (3) the court, in the order of expungement, may specify other
0065 circumstances under which the conviction is to be disclosed; and

0066 (4) the conviction may be disclosed in a subsequent prosecu-
0067 tion for an offense which requires as an element of such offense a
0068 prior conviction of the type expunged.

0069 (f) Whenever a person is convicted of an ordinance violation,
0070 pleads guilty and pays a fine for such a violation or is placed on
0071 parole or probation or is given a suspended sentence for such a
0072 violation, the person shall be informed of the ability to expunge
0073 the conviction.

0074 (g) Subject to the disclosures required pursuant to subsection
0075 (e), in any application for employment, license or other civil right
0076 or privilege, or any appearance as a witness, a person whose
0077 conviction of an offense has been expunged under this statute
0078 may state that he or she has never been convicted of such offense.

0079 (h) Whenever the record of any conviction has been expunged
0080 under the provisions of this section, the custodian of the records
0081 of arrest, conviction and incarceration relating to that crime shall

:
(A) As a detective with a private detective agency, as defined by
K.S.A. 75-7b01;
(B) as security personnel with a private patrol operator, as defined
by K.S.A. 75-7b01; or
(C) with a criminal justice agency, as defined by section 3

0082 not disclose the existence of such records, except when requested
0083 by:

0084 (1) The person whose record was expunged;

0085 (2) ~~a law enforcement agency~~, and the request is accompanied
0086 by a statement that the request is being made in conjunction with
0087 an application for employment with such agency by the person
0088 whose record has been expunged;

0089 (3) a court, upon a showing of a subsequent conviction of the
0090 person whose record has been expunged;

0091 (4) a person entitled to such information pursuant to the terms
0092 of the expungement order; or

0093 (5) a prosecuting attorney, and such request is accompanied
0094 by a statement that the request is being made in conjunction with
0095 a prosecution of an offense that requires a prior conviction as one
0096 of the elements of such offense.

0097 Sec. 2. (a) Except as provided in subsection (b), any person
0098 convicted in this state of a misdemeanor or a class D or E felony
0099 may petition the convicting court for the expungement of such
0100 conviction if two or more years have elapsed since the person has:
0101 (1) Satisfied the sentence imposed; or (2) was discharged from
0102 probation, parole, conditional release or a suspended sentence.

0103 (b) In the case of a conviction for a class A, B or C felony or
0104 any violation enumerated in subsection (a) of K.S.A. 1977 Supp.
0105 8-285, and any amendments thereto, no person may petition for
0106 expungement until five or more years have elapsed since the
0107 person: (1) Satisfied the sentence imposed; or (2) was discharged
0108 from probation, parole, conditional release or a suspended sen-
0109 tence.

0110 (c) When a petition for expungement is filed, the court shall
0111 set a date for a hearing thereon and shall give notice thereof to the
0112 prosecuting attorney. Any person who may have relevant infor-
0113 mation about the petitioner may testify at the hearing. The court
0114 may inquire into the background of the petitioner and shall have
0115 access to any reports or records relating to the petitioner that are
0116 on file with the secretary of corrections or the Kansas adult
0117 authority.

0118 (d) At the hearing on the petition, the court shall order the

a criminal justice agency, private detective agency or a private patrol
operator

or operator

The petition shall state: (1) The defendant's full name; (2) the full name of the defendant at the time of arrest and conviction, if different than (1); (3) the defendant's sex, race and date of birth; (4) the crime for which defendant was arrested; (5) the crime for which the defendant was convicted; (6) the date of the defendant's arrest and the date of the defendant's conviction; and (7) the identity of the arresting agency and the convicting court. In the district court there shall be a fifteen dollar (\$15) docket fee for filing a petition pursuant to this section and the provisions of subsections (b) and (c) of K.S.A. 60-2001 shall be applicable to such docket fee.

0119 petitioner's conviction expunged if the court finds:

0120 (1) That the petitioner has not been convicted of a felony in
0121 the past two years and no proceeding involving any such crime is
0122 presently pending or being instituted against the petitioner;

0123 (2) that the circumstances and behavior of the petitioner war-
0124 rant the expungement;

0125 ~~[(3) that the expungement is consistent with the public wel-
0126 fare; and~~

0127 ~~(4) that the rehabilitation of the petitioner has been attained to
0128 the satisfaction of the court.~~

0129 (e) When the court has ordered a conviction expunged, the
0130 petitioner shall be treated as not having been convicted of the
0131 crime, except that:

0132 (1) Upon conviction for any subsequent crime the conviction
0133 that was expunged may be considered as a prior conviction in
0134 determining the sentence to be imposed;

0135 (2) in any application for employment ~~[as a law enforcement
0136 officer, as defined by K.S.A. 1977 Supp. 22-2202]~~, the petitioner, if
0137 asked about previous convictions, must disclose that the convic-
0138 tion took place;

0139 (3) the court, in the order of expungement, may specify other
0140 circumstances under which the conviction is to be disclosed; and

0141 (4) the conviction may be disclosed in a subsequent prosecu-
0142 tion for an offense which requires as an element of such offense a
0143 prior conviction of the type expunged.

0144 (f) Whenever a person is convicted of a crime, pleads guilty
0145 and pays a fine for a crime or is placed on parole or probation or is
0146 given a suspended sentence or conditional release, the person
0147 shall be informed of the ability to expunge the conviction.

0148 (g) Subject to the disclosures required pursuant to subsection
0149 (e), in any application for employment, license or other civil right
0150 or privilege, or any appearance as a witness, a person whose
0151 conviction of a crime has been expunged under this statute may
0152 state that he or she has never been convicted of such crime, but
0153 the expungement of a felony conviction does not relieve an
0154 individual of complying with any state or federal law relating to
0155 the use or possession of firearms by persons convicted of a felony.

and

- (A) As a detective with a private detective agency, as defined by K.S.A. 75-7b01;
- (B) as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01; or
- (C) with a criminal justice agency, as defined by section 3

0156 (h) Whenever the record of any conviction has been expunged
0157 under the provisions of this section, the custodian of the records
0158 of arrest, conviction and incarceration relating to that crime shall
0159 not disclose the existence of such records, except when requested
0160 by:

0161 (1) The person whose record was expunged;
0162 (2) a law enforcement agency, and the request is accompanied
0163 by a statement that the request is being made in conjunction with
0164 an application for employment with such agency by the person
0165 whose record has been expunged;

0166 (3) a court, upon a showing of a subsequent conviction of the
0167 person whose record has been expunged;

0168 (4) a person entitled to such information pursuant to the terms
0169 of the expungement order; or

0170 (5) a prosecuting attorney, and such request is accompanied
0171 by a statement that the request is being made in conjunction with
0172 a prosecution of an offense that requires a prior conviction as one
0173 of the elements of such offense.

0174 ~~Sec. 3.~~ K.S.A. 1977 Supp. 8-290, 12-4515, 21-4616 and 21-
0175 4617 are hereby repealed.

0176 ~~Sec. 4.~~ This act shall take effect and be in force from and after
0177 its publication in the statute book.

a criminal justice agency, private detective agency or a private patrol operator

or operator

Sec. 3. As used in sections 1 and 2, "criminal justice agency" means any government agency or subdivision of any such agency which is authorized by law to exercise the power of arrest, detention, prosecution, adjudication, correctional supervision, rehabilitation, or release of persons suspended, charged, or convicted of a crime and which allocates a substantial portion of its annual budget to any of these functions. The term includes, but is not limited to, the following agencies, when exercising jurisdiction over criminal matters or criminal history record information:

(1) State, county, municipal and railroad police departments, sheriffs' offices and county-wide law enforcement agencies, correctional facilities, jails, and detention centers;

(2) the office of the attorney general, county or district attorneys, and any other office in which are located persons authorized by law to prosecute persons accused of criminal offenses; and

(3) the district courts, the court of appeals, the supreme court, the municipal courts and the offices of the clerks of these courts.

4.

5.



W. L. ALBOTT
DIRECTOR

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January 30, 1978

The Honorable Ward P. Ferguson
House of Representatives
Statehouse
Topeka, KS 66612

Dear Representative Ferguson:

At the Judiciary Committee hearing of the 23rd on House Bill 2711, Chairman Brewster asked that the KBI provide the Committee with additional, specific information about what identifying data should be included in expungement orders to assist in their execution. This letter includes those items that we feel are essential in the process.

Later on in the hearing, Chairman Brewster appointed you to chair a subcommittee to consider those changes proposed for HB2711 during the hearing. In order to help the subcommittee meet the ten day report deadline, this letter is being sent directly to you rather than through Chairman Brewster.

We would very much like to see the following data included in every expungement order:

1. Defendant's FULL name (also maiden name if appropriate to the proceedings)
2. Defendant's sex, race, and date of birth
3. The crime for which the defendant was arrested.
4. The crime for which the defendant was convicted (frequently different from Item 3)
5. The date of the defendant's arrest and the date of conviction.
6. The identity of the arresting agency and/or which court convicted the defendant.
7. The defendant's correctional, probationary, or parole history, if at all available.

We have included a reproduction of part of The Kansas Prosecutors' Quarterly Journal for the fall of 1977. The article by Attorney General Curt T. Schneider and Assistant Attorney General Michael G. Moroney contains sample court orders that include most of those items listed above.

We also mentioned some additional concerns during the hearing. Among these was the handling of entries that are related to expunged records. As described in our remarks, we have operated under the assumption that it was the Legislature's intention that the related entries, such as parole violations and failure to appear arrests be expunged along with the original, related offense, even though it is technically a separate crime. A literal reading of the statute would not technically support this procedure. And therefore, it may be appropriate for this situation to be addressed in HB2711.

Since the hearing, we have realized another concern, involving "old" expungements. HB2711 is silent about the extent of disclosure allowed for records expunged/annulled/dismissed under previous similar statutes. Persons who had their convictions sealed under the old statutes may be very upset, even to the point of filing suit against records custodians, if their records are now disclosed without specific statutory authority. Because this is a definite possibility, most records custodians, including the Bureau, will probably react to a lack of direction in this area by treating "new" and "old" expungements differently. This means the creation of another filing system and a completely new procedure for the handling of expungements.

Other conferees before the Committee mentioned items of concern. The Department of Corrections expressed significant concerns about their inability to discover expunged convictions when considering persons for employment in the State corrections system. Similar concerns exist in other criminal justice agencies. The Bureau concurs with the requests that HB2711 be broadened to include all criminal justice agencies. A workable definition for "criminal justice agencies" presently appears in Senate Bill 406. It may be possible to use this definition by reference if the bill passes, but with the possibility that the bill will not pass, it might be appropriate to reproduce this definition in HB2711. We do not feel that altering the definition of a law enforcement officer is an appropriate answer to this problem. Increasingly, in the law enforcement and criminal justice area; highly sensitive and extremely responsible positions are filled by persons who are not commissioned, and have no need for such powers. To tie disclosure of expunged records to "law enforcement officer" status will increasingly place criminal justice agencies in a hazardous position.

Conferees from the Wichita Police Department described their concerns about the employment and/or licensing of persons with expunged records as security personnel. Across the state, there are probably as many private security officers as there are officers employed in the public service. In many cases, security officers protect or even directly handle large amounts of assets or sensitive materials. Without some assurance that these persons are reputable, criminal justice agencies will certainly face significant and growing problems. It seems appropriate that HB2711 could be amended to allow disclosure of expunged records for the purposes of licensing private security or investigative personnel.

We think that we have described all the significant items mentioned before the Committee on the 23rd, except your own request that the Committee consider the expungement of arrests that do not result in convictions. It did not appear necessary for us to recount and expand on your own proposal in a letter to you.

If you feel it necessary at all, the Bureau will of course be available to provide any additional information or assistance to you or your subcommittee that it can in this area.

Sincerely,

A handwritten signature in cursive script, appearing to read "W. L. Albott", with a long horizontal flourish extending to the right.

W. L. ALBOTT
Director

cc: Brewster
Chief Lamunyon
Secy. Marquez

JCB:bl

Volume 2, Number 1

Fall 1977

THE KANSAS PROSECUTORS' QUARTERLY JOURNAL

Published by The Kansas County and District Attorneys Association

Privacy and Security Regulations: The Federal Mandate and The Need for Standardized Expungement Orders

by Curt T. Schneider, Attorney General, State of Kansas
and
Michael G. Moroney, Assistant Attorney General, Legal Advisor KBI



KANSAS COUNTY & DISTRICT ATTORNEYS ASSOCIATION
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tion 524(a) of the Act and any regulations implementing section 524(a), and provide sanctions for the violation thereof. This group includes any good faith researchers and is not meant to limit research by only "certified research" organizations, such as "Search Group, Inc." Examples of an "agreement" such as this be acquired at the Kansas Bureau of Investigation.

Specific inquiries such as: "Was John Doe arrested for armed robbery on October 5, 1977?" from news media or anyone can be answered. However, neither the public nor the "Fourth Estate" is to be permitted a general "fishing expedition" through non-conviction data.

CAVEAT: CHRI DOES NOT INCLUDE law enforcement intelligence or investigative data, nor anything not specifically defined in §20.3 (b).

Further, arrest (non-conviction) information, as well as other official contacts with the criminal justice system, such as arraignment, trial, etc., are already public to some extent and can be released if the inquiring party's request is "reasonably contemporaneous" with the event. Similarly, the fact of arrest, kept on a police blotter, entered on a chronological or daily basis, is matter of public concern. Our Constitution carefully guards against secret arrests.⁸

In summary, some general conclusions can be drawn:

1) Any individual has a right to see his rap sheet containing CHRI, arrests and dispositions, and to challenge the validity of entries thereupon. He has no right to see investigative or intelligence information.

2) Anyone can request CONVICTION data.

3) If contemporaneous with the event, anyone can inquire as to the fact of arrest, arraignment, trial or any other contact with the criminal justice system. Subsection 20.20 (c) recognizes that announcements of ongoing developments in the criminal justice process should not be precluded from public disclosure. Thus, announcements of arrest, conviction, and new developments in the course of an investigation *may* (emphasis added) be made.

4) The Regulations only set forth *limitations* as to dissemination. State and local agencies *may* further limit the groups of people who are eligible to receive CHRI, with but one caveat:

Records of conviction are *not* CHRI under these Regulations.

Now, fellow Greeks, we have taken the perilous journey through the labyrinth and we have slain the Minotaur. Let no one be heard to say, "It's Greek to me!"

Footnotes

1. 28 C.F.R. Part 20, 41 Fed. Register 11714 (March 19, 1976).
2. *Id.*
3. *Id.*, §20.3 (b).
4. 5 USC §551, §552.
5. Public Law 93-579; 88 Stat 1896.

6. For a discussion of judicial recognition of this phenomenon, see *In Re Alexander*, 259 A 2d 592 (D.C. 1969).
7. *Paul v. Davis*, 424 U.S. 693, 47 L. Ed. 2d 405, 96 S. Ct. 1155, re-den 425 U.S. 985, 48 L.Ed. 2d 811, 96 S. Ct. 2194 (1976).
8. Constitution of the U.S., Amendments Six and Fourteen; Constitution of the State of Kansas, Bill of Rights, §5.

Expungement and Annulment: How to Expedite

There presently exists a great deal of confusion as to how to expeditiously expunge or annul criminal convictions under K.S.A. 1976 Supp. 21-4616, 21-4617 and 12-4515. In the interest of a more standardized procedure, we hope to explain the problem and provide more standard forms which, if utilized, will insure rapid and efficient expungement.

Since the Kansas Bureau of Investigation is the nominative central state repository for criminal record information, it is that agency which has to seal up the record expunged or annulled. Kansas Supreme Court Rule 184 sets forth the procedure, and you are advised to familiarize yourself with it.

The real problem is this: Expungement and annulment orders are regularly received at the Kansas Bureau of Investigation containing insufficient identi-

fiers, such as date of birth, social security numbers, and sex. Further, some orders do not set forth the crime charged nor the date of conviction. In many instances, the K.B.I. rap sheet won't show the conviction at all. It would be a great aid if prosecutors could simply send a letter to the K.B.I. identifying the individual, his date of arrest, and date of final disposition, e.g., conviction, nolo contendere plea, etc.

The rap sheet entry is created when a fingerprint card is submitted by the arresting agency. Sometimes, an individual is convicted of one or more other crimes for which he was not originally arrested. For example, an individual is arrested on October 1, 1977, for burglary. On November 30, 1977, he pleads guilty to temporary deprivation of property. Imagine the confusion when the K.B.I. receives an order of expungement three or

Defendant, Case No. _____, be and the same is hereby annulled, vacated and set aside; that the complaint in said cause against said John Phillip Doe be and the same is hereby dismissed; that he be and is hereby released from all penalties and disabilities resulting from the conviction of said crime and that he be and is hereby authorized to state in any application for employment, license or other civil right or privilege, and when appearing as a witness in any cause, that he has never been convicted of said crime, all as provided for by K.S.A. 1976 Supp. 21-4515.

(Attest: A true copy by the clerk of the District Court)

IT IS SO ORDERED.

Judge of the Municipal Court of the
City of _____,
County of _____, Kansas

APPROVAL:

Name

Address

City and State, Zip

Telephone Number

Attorney for Defendant,
John Phillip Doe

Name

Title

Address

Attorney for Plaintiff,

*This office recently issued an opinion, Attorney General Opinion No. 77-329, October 7, 1977, which provides in part that a conviction expunged or annulled under K.S.A. 12-4515, 21-4616, or 21-4617 cannot be used in establishing the requisite number of convictions required to be an habitual violator, under K.S.A. 8-284, et seq.

The material herein is part of a continuing program of training and assistance for Kansas prosecutors. This program is made possible by a Law Enforcement Assistance Administration grant provided by the Kansas Governor's Committee on Criminal Administration.

four years later. Now you can see the problem.

Here are some forms which should aid you in serving the courts, the Kansas Bar, and the people of Kansas.

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS
DIVISION _____

STATE OF KANSAS,

Plaintiff

v.

JOHN PHILLIP DOE

Defendant

No. _____

ORDER ANNULING (EXPUNGING) CONVICTION(S)

On this _____ of _____, 19____, comes John Phillip Doe, the Defendant in the above entitled case(s), by and through his attorney, _____, and presents to the court his verified motion to annul the conviction(s) hereinafter set forth, and to dismiss the complaint in said cause, all as provided by K.S.A. 1976 Supp. 21-4616 (21-4617).

Thereupon, the petitioner presents his evidence, and the court having heard the evidence adduced, being well advised in the premises, finds as follows:

1. That on _____, 19____, said petitioner, John Phillip Doe, was convicted of a felony offense in said cause in the District Court of _____ County, Kansas, to-wit: Obtaining unauthorized control over property over the value of \$50.00, in violation of K.S.A. 21-3701 (theft).

2. That on said date the Defendant and petitioner, John Phillip Doe, was less than twenty-one years of age, having been born on the _____ day of _____, 19____.

3. The petitioner and Defendant was sentenced to a minimum term of _____ year(s) pursuant to K.S.A. 21-4501 and remanded to the custody of the Kansas Director of Penal Institutions, with instructions to said Director that the Defendant be referred to the Kansas Reception and Diagnostic Center in Topeka, Kansas, for examination. The Defendant served his sentence at the Kansas State Industrial Reformatory in Hutchinson, Kansas, and was later paroled therefrom. Said Defendant and petitioner has served his sentence and fulfilled the conditions of his parole and was discharged from parole on _____, 19____, as exemplified by his certificate of discharge from the Kansas Adult Authority, given pursuant to K.S.A. 22-3722.

4. The judgments, verdict and sentence in said cause (Case No. _____, District Court of _____ County, Kansas) should be set aside, the complaints filed against the said John Phillip Doe should be dismissed and he should be released from all disabilities resulting from the crime of which he was convicted as aforesaid.

5. The petitioner and Defendant should be authorized to state in any application for employment, license, civil right or privilege, or when appearing as a witness in any cause, to state that he has never been convicted of such crime, all as provided for by K.S.A. 1976 Supp. 21-4616 (21-4617).

IN THE MUNICIPAL COURT OF THE CITY OF _____
COUNTY, KANSAS

STATE OF KANSAS,

Plaintiff

v.

JOHN PHILLIP DOE

Defendant

No. _____

ORDER ANNULING CONVICTION
AND DISMISSING COMPLAINT

On this _____ of _____, 19____, comes John Phillip Doe, the Defendant in the above entitled case, by and through his attorney, _____, and presents to the court his verified motion to annul the conviction hereinafter set forth, and to dismiss the complaint in said cause, all as provided by K.S.A. 1976 Supp. 21-4515. Thereupon, petitioner presents his evidence, and the court having heard the evidence adduced, being well advised in the premises, finds as follows:

1. That on _____, 19____, said petitioner, John Phillip Doe, was convicted of a violation of City of _____ County, Kansas, Ordinance No. _____, to-wit: (set forth the specific violation).

IT IS THEREFORE by the court ordered, that the conviction of said John Phillip Doe of the crime of obtaining unauthorized control over property over the value of \$50.00 in violation of K.S.A. 21-3701, on _____, 19____, in the District Court of _____ County, Kansas, where the State of Kansas was Plaintiff and John Phillip Doe was Defendant, Case No. _____, be and the same is hereby annulled, vacated and set aside (expunged, vacated and set aside); that the complaint in said cause against said John Phillip Doe be and the same is hereby dismissed; that he be and is hereby released from all penalties and disabilities resulting from the conviction of said crime and that he be and is hereby authorized to state in any application for employment, license or other civil right or privilege, and when appearing as a witness in any cause, that he has never been convicted of said crime, all as provided for by K.S.A. 1976 Supp. 21-4616. Further, the custodian of the records of arrest, conviction and incarceration relating to the aforementioned crime shall not disclose the existence of such records upon inquiry from any source, unless such inquiry be that of the individual whose conviction was annulled (expunged), or that of a sentence in court following the conviction of the individual, whose conviction was annulled (expunged), for the commission of a subsequent crime. Such custodian shall release such records to the sentencing court upon a showing of the conviction of such individual of a subsequent crime and a statement that the information is necessary in determining the sentence to be imposed for the subsequent crime. The individual whose conviction of a crime has been annulled (expunged) shall be given access to examine such records relating to that crime.

IT IS SO ORDERED.

District Judge
(Associate District Judge)

APPROVED:

(Attest: A true copy by the clerk of the District Court)

Name

Address

City and State, Zip

Telephone Number

Attorney for Defendant,
John Phillip Doe

Name

County (District Attorney)

County Courthouse

Attorney for Plaintiff,

2. That on said date the said Defendant and petitioner was _____ years of age, having been born on the _____ day of _____, 19____.

3. The petitioner and Defendant was sentenced to _____ (set forth his sentence, or conditions of probation). The Defendant served his sentence (paid his fine), (and was later paroled therefrom). Said Defendant and petitioner has fulfilled the conditions of his probation on _____, 19____.

The judgments, verdict and sentence in said cause (Case No. _____, _____ Court of the City of _____ County, Kansas) should be set aside, the complaints filed against the said John Phillip Doe be dismissed and he should be released from all disabilities resulting from the crimes of which he was convicted as aforesaid.

The petitioner and Defendant should be authorized to state in any application for employment, license, civil right or privilege, or when appearing as a witness in any cause, to state that he has never been convicted of such offense, all as provided for by K.S.A. 1976 Supp. 12-4515, except that upon conviction of any subsequent offense, such conviction may be considered as a prior conviction in this court in determining the sentence to be imposed.

IT IS THEREFORE by the court ordered, that the conviction of said John Phillip Doe of the offense of (set forth specific offense), on _____, 19____, in the Municipal Court of the City of _____ County, Kansas, wherein the aforementioned City of _____ County, Kansas, was Plaintiff and John Phillip Doe was

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(a) The filing or pendency of the application for review provided for in this act shall not in itself stay or suspend the operation of any order or decision of the commission, except as provided in sub-section (b) below, but, during the pendency of such proceeding the court, in its discretion, may stay or suspend, in whole or in part, the operation of the order or decision of the commission. No order so staying or suspending an order or decision of the commission shall be made by any court of this state other wise than on five days' notice and after a hearing, and if a stay or suspension is allowed the order granting the same shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that great or irreparable damage would otherwise result to the petitioner and specifying the nature of the damage.

(b) If the court of appeals does not issue a final order within 120 days after the filing with the clerk of the court of appeals of an application for judicial review of an order or decision of the commission in a public utility rate case, the court of appeals shall automatically stay the order or decision of the commission, to the extent hereafter described, when such stay is requested by motion of a public utility that is a party to the action. The commissions order or decision shall be stayed only to the extent that the commission did not grant the amount that is being contested by the public utility on appeal. The public utility may collect, under bond, rates up to but not exceeding the amount that is being contested by the public utility on appeal. The procedure for bonding, payment of funds into court, distribution of unclaimed funds and for other aspects of review shall be governed by K.S.A. 66-118h through 66-118k inclusive.

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