

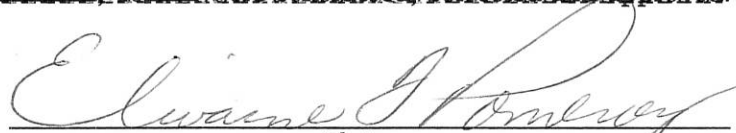
MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Held in Room 519 S, at the Statehouse at 11:00 a. m. ~~p.m.~~ on March 23, 19 78.

All members were present except: Senator Gaar

The next meeting of the Committee will be held at 8:00 a. m. ~~p.m.~~ on March 24, 19 78.

~~These minutes of the meeting held on xxxxxxxxxxxxxxxxxxxxxxxx 19 xxx were considered, corrected and approved.~~

  
Chairman

The conferees appearing before the Committee were:

- Gene Olander - Shawnee County District Attorney
- John K. Blythe - Kansas Farm Bureau
- Gerald Goodell - Kansas Judicial Council
- Jim James - Supreme Court Judicial Administrator

Staff present:

- Art Griggs - Revisor of Statutes
- Jim Wilson - Revisor of Statutes
- Jerry Stephens - Legislative Research Department
- Cynthia Burch - Legislative Research Department

House Bill 2633 - Compensation of certain district attorneys. Gene Olander testified in support of the bill. The bill would provide that district attorneys would receive the same salaries as district judges. It was the intention of the District Attorneys Association that the salary be whatever the district judge of that particular district was receiving.

Senator Everett introduced his daughter, Alice, and her friend, Barbara Breeding, who were serving as committee pages.

House Bill 2988 - Sub. for HB 2988; Termination of farm tenancy. John Blythe testified in support of the bill. He stated that concerns had arisen in western Kansas, and that there is a problem if a farmer has started the work on his land and then has his tenancy terminated. This bill would allow the farmer to be able to collect the expenses he had incurred in preparing for the next crop. Committee discussion with him followed.

House Bill 3234 - Counsel for indigent defendants, partial indigency, public defenders, budget approval. Jerry Goodell testified in support of the bill. He related that the bill had been introduced at the request of the Kansas Judicial Council, pursuant to a study made by a committee of the council. The portion of the bill recommended by the council are sections 1, 8, 9, and 10. The bill would provide the means by which some recoupment could be made for the ex-

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.

HB 3234 continued -

penditures from the aid to indigent defendants fund from certain defendants, and introduces the concept of partial indigency. It also would remove the function of hiring public defenders from the district judges and place that responsibility in the board of supervisors of panels. The state board would then hire and fire public defenders. Committee discussion with him followed.

Mr. Jim Wilson explained the portion of the bill that had been added by the House Ways and Means Committee. Sections 2 through 7 contain clean up language concerning budget proceedings.

Senator Berman asked if there was a fiscal note concerning the bill; no one knew of any fiscal note being prepared for the bill. Senator Simpson commented that the establishing of a four year term for the public defender is new. Senator Berman inquired what would happen if the supreme court doesn't make the rules provided for in the bill. Senator Hess inquired if this was the first step toward a medicaid situation toward lawyers.

In answer to a question, Mr. Jim James stated that this bill attempts to get a handle on the indigency question. Senator Hess asked him if he had ever had a meeting with district court judges regarding indigency. Mr. James replied that no such meeting had been conducted; the determination of indigency has been a judicial question.

House Bill 2711 - Expungement and annulment of certain convictions. The staff distributed ballooned copies of the bill showing the amendments previously adopted by the committee, in order to see if the committee approved of the manner in which the amendments had been drafted. The consensus was that of approval.

The chairman reminded the committee of the three working sessions tomorrow; at 8:00 a.m., at 11:00 a.m., and 1:30 p.m.

The meeting adjourned.

These minutes were read and approved  
by the committee on 4-24-78.

GUESTS

## SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Mout Shadwick	Salina	Salina Central
Toby Sutherland	Salina	Salina Central
Allene Hough	Salina	Salina Central
<del>Cindy Baldwin</del>	Salina	Salina Central
MS Berger	Topela	Cap Farm
Jackie Hamlet	Salina	Salina Central
Celia Nicholson	Salina	Salina Central
Ed M. Paull	Topela	Ks. Jud. Com
Gene Goodell	Topela Ks.	Ks. Jud. Council
John K. Blythe	Manhattan	Kansas Farm Bureau
Alvin & Lucia Bennett	Oreland Park	none
Ellen Wood	Emporia	The Way College
Jim Worden	Emporia	The Way College
Billy E. Gutt	Emporia	The Way College
Susan Badarak	Emporia	The Way College
Kathleen Sedelius	Topela	KTCA
Jay Simpson	Salina	Salina Central
Russell Waller	Salina	Salina Central
Louise Humes	Salina	Salina Central
Maritza Mendez	Costa Rica	Salina Central
Doug Amernd	Salina	Salina Central

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Anny Van der Horst	421 Regent Rd. Salina, Ks.	Salina Central
Garnet Moss	2024 Ridgella Dr. Salina, Ks.	Salina Central
Gary Hauptli	465 Laura, Salina, Ks	Salina Central H.S.
Joe Pratten	211 Redwood, Salina, Ks	Salina Central

HOUSE BILL No. 2711

By Special Committee on Judiciary—B

Re Proposal No. 39

12-7

0018 AN ACT relating to crimes; concerning the expungement of  
0019 certain convictions; concerning certain traffic offenses and  
0020 penalties; repealing K.S.A. 1977 Supp. 8-290, 12-4515, 21-4616  
0021 and 21-4617.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 Section 1. (a) Except as provided in subsection (b), any per-  
0024 son who has been convicted of a violation of a city ordinance of  
0025 this state may petition the convicting court for the expungement  
0026 of such conviction if two or more years have elapsed since the  
0027 person: (1) Satisfied the ~~entire~~ sentence imposed; or (2) was  
0028 discharged from probation, parole or a suspended sentence.

0029 (b) In the case of a conviction for the violation of a city  
0030 ordinance which would also constitute a violation of any of the  
0031 items enumerated in subsection (a) of K.S.A. 1977 Supp. 8-285,  
0032 and any amendments thereto, no person may petition for ex-  
0033 pungement until five or more years have elapsed since the per-  
0034 son: (1) Satisfied the sentence imposed; or (2) was discharged  
0035 from probation, parole or a suspended sentence.

0036 (c) When a petition for expungement is filed, the court shall  
0037 set a date for a hearing thereon and shall give notice thereof to the  
0038 prosecuting attorney. The petition shall state: (1) The defend-  
0039 ant's full name; (2) the full name of the defendant at the time of  
0040 arrest and conviction, if different than (1); (3) the defendant's  
0041 sex, race, and date of birth; (4) the crime for which the defendant  
0042 was convicted; (5) the date of the defendant's conviction; and (6)  
0043 the identity of the convicting court. ~~In the district court there~~  
0044 ~~shall be a five dollar (\$5) docket fee for filing a petition~~

A person arrested for the violation of a city ordinance that did not result in a conviction therefor may have the record of such arrest expunged as provided in section 3.

0045 ~~pursuant to this section and the provisions of subsections (b) and~~  
0046 ~~(c) of K.S.A. 60-2001 shall be applicable to such docket fee.]~~ Any  
0047 person who may have relevant information about the petitioner  
0048 may testify at the hearing. The court may inquire into the back-  
0049 ground of the petitioner and shall have access to any reports or  
0050 records relating to the petitioner that are on file with the secretary  
0051 of corrections or the Kansas adult authority.

0052 (d) At the hearing on the petition, the court shall order the  
0053 petitioner's conviction expunged if the court finds:

0054 (1) That the petitioner has not been convicted of a felony in  
0055 the past two years and no proceeding involving any such crime is  
0056 presently pending or being instituted against the petitioner;

0057 (2) that the circumstances and behavior of the petitioner war-  
0058 rant the expungement; and

0059 (3) that the expungement is consistent with the public wel-  
0060 fare; and

0061 (4) ~~that the rehabilitation of the petitioner has been attained to~~  
0062 ~~the satisfaction of the court.~~

0063 (e) When the court has ordered a conviction expunged, the  
0064 order of expungement shall state the information required to be  
0065 contained in the petition. Thereafter, the petitioner shall be  
0066 treated as not having been convicted of the crime, except that:

0067 (1) Upon conviction for any subsequent crime the conviction  
0068 that was expunged may be considered as a prior conviction in  
0069 determining the sentence to be imposed;

0070 (2) in any application for employment as a law enforcement  
0071 officer, as defined by K.S.A. 1077 Supp. 22-2202: (A) as a detec-  
0072 tive with a private detective agency, as defined by K.S.A. 75-  
0073 7b01; (B) as security personnel with a private patrol operator, as  
0074 defined by K.S.A. 75-7b01; or (C) with a criminal justice agency,  
0075 as defined by section ~~5~~, the petitioner, if asked about previous  
0076 convictions, must disclose that the conviction took place;

0077 (3) the court, in the order of expungement, may specify other  
0078 circumstances under which the conviction is to be disclosed; and

0079 (4) the conviction may be disclosed in a subsequent prosecu-  
0080 tion for an offense which requires as an element of such offense a  
0081 prior convict of the type expunged.

1 of Senate Bill No. 406, as enacted by the 1978 legislature

0082 (f) Whenever a person is convicted of an ordinance violation,  
0083 pleads guilty and pays a fine for such a violation or is placed on  
0084 parole or probation or is given a suspended sentence for such a  
0085 violation, the person shall be informed of the ability to expunge  
0086 the conviction.

0087 (g) Subject to the disclosures required pursuant to subsection  
0088 (e), in any application for employment, license or other civil right  
0089 or privilege, or any appearance as a witness, a person whose  
0090 conviction of an offense has been expunged under this statute  
0091 may state that he or she has never been convicted of such offense.

0092 (h) Whenever the record of any conviction has been expunged  
0093 under the provisions of this section, the custodian of the records  
0094 of arrest, conviction and incarceration relating to that crime shall  
0095 not disclose the existence of such records, except when requested  
0096 by:

- 0097 (1) The person whose record was expunged;  
0098 (2) a law enforcement agency, a criminal justice agency,  
0099 private detective agency or a private patrol operator, and the  
0100 request is accompanied by a statement that the request is being  
0101 made in conjunction with an application for employment with  
0102 such agency or operator by the person whose record has been  
0103 expunged;  
0104 (3) a court, upon a showing of a subsequent conviction of the  
0105 person whose record has been expunged;  
0106 (4) a person entitled to such information pursuant to the terms  
0107 of the expungement order; or  
0108 (5) a prosecuting attorney, and such request is accompanied  
0109 by a statement that the request is being made in conjunction with  
0110 a prosecution of an offense that requires a prior conviction as one  
0111 of the elements of such offense.

0112 Sec. 2. (a) Except as provided in subsection (b), any person  
0113 convicted in this state of a misdemeanor or a class D or E felony  
0114 may petition the convicting court for the expungement of such  
0115 conviction if two or more years have elapsed since the person has:  
0116 (1) Satisfied the sentence imposed; or (2) was discharged from  
0117 probation, parole, conditional release or a suspended sentence.

0118 (b) In the case of a conviction for a class A, B or C felony or

or K.S.A. 1977 Supp. 12-4515,  
statutory predecessor thereof

21-4616, 21-4617 or the

0119 any violation enumerated in subsection (a) of K.S.A. 1977 Supp.  
0120 8-285, and any amendments thereto, no person may petition for  
0121 expungement until five or more years have elapsed since the  
0122 person: (1) Satisfied the sentence imposed; or (2) was discharged  
0123 from probation, parole, conditional release or a suspended sen-  
0124 tence.

0125 (c) When a petition for expungement is filed, the court shall  
0126 set a date for a hearing thereon and shall give notice thereof to the  
0127 prosecuting attorney. The petition shall state: (1) the defendant's  
0128 full name; (2) the full name of the defendant at the time of arrest  
0129 and conviction, if different than (1); (3) the defendant's sex, race  
0130 and date of birth; (4) the crime for which the defendant was  
0131 convicted; (5) the date of the defendant's conviction; and (6) the  
0132 identity of the convicting court. In the district court there shall  
0133 be a thirty-five dollar (\$35) docket fee for filing a petition  
0134 pursuant to this section and the provisions of subsections (b) and  
0135 (c) of K.S.A. 60-2001 shall be applicable to such docket fee. Any  
0136 person who may have relevant information about the petitioner  
0137 may testify at the hearing. The court may inquire into the back-  
0138 ground of the petitioner and shall have access to any reports or  
0139 records relating to the petitioner that are on file with the secretary  
0140 of corrections or the Kansas adult authority.

0141 (d) At the hearing on the petition, the court shall order the  
0142 petitioner's conviction expunged if the court finds:

0143 (1) That the petitioner has not been convicted of a felony in  
0144 the past two years and no proceeding involving any such crime is  
0145 presently pending or being instituted against the petitioner;

0146 (2) that the circumstances and behavior of the petitioner war-  
0147 rant the expungement; and

0148 (3) that the expungement is consistent with the public wel-  
0149 fare; and

0150 (4) that the rehabilitation of the petitioner has been attained to  
0151 the satisfaction of the court.

0152 (e) When the court has ordered a conviction expunged, the  
0153 order of expungement shall state the information required to be  
0154 contained in the petition. Thereafter, the petitioner shall be  
0155 treated as not having been convicted of the crime, except that:



0156 (1) Upon conviction for any subsequent crime the conviction  
0157 that was expunged may be considered as a prior conviction in  
0158 determining the sentence to be imposed;

0159 (2) in any application for employment as a law enforcement  
0160 officer, as defined by K.S.A. 1977 Supp. 22-2202; (A) as a detec-  
0161 tive with a private detective agency, as defined by K.S.A. 75-  
0162 7b01; (B) as security personnel with a private patrol operator, as  
0163 defined by K.S.A. 75-7b01; or (C) with a criminal justice agency,  
0164 as defined by section 6, the petitioner, if asked about previous  
0165 convictions, must disclose that the conviction took place;

0166 (3) the court, in the order of expungement, may specify other  
0167 circumstances under which the conviction is to be disclosed; and

0168 (4) the conviction may be disclosed in a subsequent prosecu-  
0169 tion for an offense which requires as an element of such offense a  
0170 prior conviction of the type expunged.

0171 (f) Whenever a person is convicted of a crime, pleads guilty  
0172 and pays a fine for a crime or is placed on parole or probation or is  
0173 given a suspended sentence or conditional release, the person  
0174 shall be informed of the ability to expunge the conviction.

0175 (g) Subject to the disclosures required pursuant to subsection  
0176 (e), in any application for employment, license or other civil right  
0177 or privilege, or any appearance as a witness, a person whose  
0178 conviction of a crime has been expunged under this statute may  
0179 state that he or she has never been convicted of such crime, but  
0180 the expungement of a felony conviction does not relieve an  
0181 individual of complying with any state or federal law relating to  
0182 the use or possession of firearms by persons convicted of a felony.

0183 (h) Whenever the record of any conviction has been expunged  
0184 under the provisions of this section, the custodian of the records  
0185 of arrest, conviction and incarceration relating to that crime shall  
0186 not disclose the existence of such records, except when requested  
0187 by:

0188 (1) The person whose record was expunged;

0189 (2) a law enforcement agency a criminal justice agency, pri-  
0190 vate detective agency or a private patrol operator, and the request  
0191 is accompanied by a statement that the request is being made in  
0192 conjunction with an application for employment with such

section 1 of Senate Bill No. 406 as enacted by the 1978 legislature

or K.S.A. 1977 Supp. 12-4515, 21-4616, 21-4617 or the statutory  
predecessor thereof.

0193 agency or operator by the person whose record has been ex-  
0194 punged;

0195 (3) a court, upon a showing of a subsequent conviction of the  
0196 person whose record has been expunged;

0197 (4) a person entitled to such information pursuant to the terms  
0198 of the expungement order; or

0199 (5) a prosecuting attorney, and such request is accompanied  
0200 by a statement that the request is being made in conjunction with  
0201 a prosecution of an offense that requires a prior conviction as one  
0202 of the elements of such offense.

0203 **Sec. 3. ~~As used in sections 1 and 2, "criminal justice agency"~~**  
0204 **~~means any government agency or subdivision of any such agency~~**  
0205 **~~which is authorized by law to exercise the power of arrest,~~**  
0206 **~~detention, prosecution, adjudication, correctional supervision,~~**  
0207 **~~rehabilitation, or release of persons suspended, charged, or con-~~**  
0208 **~~victed of a crime and which allocates a substantial portion of its~~**  
0209 **~~annual budget to any of these functions. The term includes, but~~**  
0210 **~~is not limited to, the following agencies, when exercising juris-~~**  
0211 **~~isdiction over criminal matters or criminal history record informa-~~**  
0212 **~~tion—~~**

0213 ~~(1) State, county, municipal and railroad police departments,~~  
0214 ~~sheriffs' offices and county-wide law enforcement agencies,~~  
0215 ~~correctional facilities, jails, and detention centers;~~

0216 ~~(2) the office of the attorney general, county or district attor-~~  
0217 ~~neys, and any other office in which are located persons autho-~~  
0218 ~~rized by law to prosecute persons accused of criminal offenses;~~  
0219 ~~and~~

0220 ~~(3) the district courts, the court of appeals, the supreme court,~~  
0221 ~~the municipal courts and the offices of the clerks of these courts.~~

0222 **Sec. 3 4. K.S.A. 1977 Supp. 8-290, 12-4515, 21-4616 and 21-**  
0223 **4617 are hereby repealed.**

0224 **Sec. 4 5. This act shall take effect and be in force from and**  
0225 **after its publication in the statute book.**

(a) Any person who has been arrested for the violation of any ordinance of any city, any resolution of a county or any law of this state may petition the court having jurisdiction to hear prosecutions of such violations for the expungement of the record of arrest if: (1) the person has been acquitted; (2) the prosecution thereof has been dismissed, or (3) the trial for the prosecution of the violation is not pending.

(b) When a petition for expungement is filed, the court shall set a date for a hearing thereon and shall give notice thereof to the prosecuting attorney. The petition shall state: (1) The defendant's full name; (2) the full name of the defendant at the time of arrest, if different than (1); (3) the defendant's sex, race, and date of birth; (4) the violation for which the defendant was arrested; (5) the date of the defendant's arrest; and (6) ~~the~~ governmental agency employing the arresting officer. In the district court there shall be a thirty-five dollar (\$35) 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.

(c) At the hearing if the court finds that the petitioner is entitled to petition for expungement of the arrest as provided by this section, the court shall order the record of arrest expunged and the order of expungement shall contain the information required to be contained in the petition. Thereafter, the petitioner shall be treated as not having been arrested for the violation, except that: (1) in any application for employment: (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 1 of Senate Bill No. 406 as enacted by the 1978 legislature, the petitioner, if asked about previous arrests, must disclose that the conviction took place;

(2) the court, in the order of expungement, may specify other circumstances under which the arrest is to be disclosed.

(d) Subject to the disclosures required pursuant to subsection (c), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest has been expunged under this statute may state that he or she has never been arrested of such violation.

(e) Whenever the record of any arrest has been expunged under the provisions of this section, the custodian of the records of arrest relating to that violation shall not disclose the existence of such records, except when requested by:

(1) The person whose record was expunged;

(2) a criminal justice agency, private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged; or

(3) a person entitled to such information pursuant to the terms of the expungement order.