

.Approved: Feb. 19, 1998
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:14 a.m. on February 16, 1998 in Room 514-S of the Capitol.

All members were present.

Committee staff present: Mike Heim, Legislative Research Department
Jerry Donaldson Legislative Research Department
Gordon Self, Revisor of Statutes
Mary Blair, Committee Secretary

Conferees appearing before the committee: Senator Alicia Salisbury
Kendra Simmer & Ed Sexe, Landlords
Rochelle Chronister, SRS

Others attending: See attached list

The minutes of the February 12 meeting were approved on a motion by Senator Goodwin and a second by Senator Bond. Motion carried.

SB 514 - Salary of district attorneys

Senator Bond reviewed **SB 514** stating that the bill amends previous law which capped the salaries of the district attorneys from Johnson, Shawnee, Wyandotte and Sedgwick Counties at the level equal to a district judge. He stated this bill removes that cap and provides, at the discretion of the county commissioners, an opportunity for an increase in the annual salary of these county attorneys. Following brief discussion Senator Bond made a motion to pass the bill out favorably. Senator Goodwin seconded. Motion carried.

SB 592 - Civil procedure; public benefit garnishment exemption repealed

Senator Salisbury, proponent of **SB 592**, related her experience in assisting Conferees Simmer and Sexe in their struggle as landlords to obtain recompense for damages done to their property by tenants on public assistance. She stated that she had visited with SRS and they suggested the landlord could do background checks prior to letting their property or ask for deposits to offset any anticipated damages. She discussed the "new" view of welfare recipients as responsible citizens and stated that this legislation helps to promote responsibility.

Conferee Simmer testified as a proponent of **SB 592**. She related the negative experience she and her husband, Conferee Sexe encountered in their unsuccessful attempt to recover damages done to their property by tenants on public assistance. She expressed concern as a special education teacher and child advocate that current law sends a message to children that not all citizens in society must be responsible for their behavior. (attachment 1) She played a video tape of the damage done to their property; Conferee Sexe narrated the tape and stood for questions. Lengthy discussion followed with concern expressed by several Committee Members.

Conferee Chronister testified as an opponent of **SB 592** pointing out the impractical aspects of applying this law to welfare recipients who, she stated, receive the barest minimum in assistance and could not afford to have their welfare checks garnished in the amount of 25% or greater and maintain a healthy standard of living. She noted that this bill sets a dangerous precedent providing a safety net for creditors rather than for the needy. She also pointed out that ultimately it is the taxpayer who must pay for the result of a garnishment. (attachment 2)

SB 215 - Effect of felony conviction on civil rights of convicted felon

The Chair briefly described **SB 215** with assistance from Randy Hearrell, Ks. Judicial Council who was present. The Chair then stated that Committee would revisit the bill at a later time.

SB 482 - An act concerning expungement; relating to diversion agreements; arrest records; violations of city ordinances.

At the request of the Chair, David Brant, Kansas Securities Commissioner, described his proposed

amendments to **SB 482** which would add language to include the Kansas Securities Commission after each section of the bill where reference to “gaming” occurs. (attachment 3) Following discussion, Senator Bond moved to accept the amendments to the bill as requested by the securities commission, Senator Feleciano seconded. Carried.

The Chair invited Mike Taylor, representing the City of Wichita, to share how **SB 482** would effect Wichita. Mr. Taylor referred to previous testimony he had submitted regarding the effect **SB 482** would have on the City of Wichita both administratively as well as financially. (attachment 4) He briefly reviewed this and stated he opposes **SB 482**.

Committee discussed the proposed amendments of the district court clerks (attachment 5) Senator Oleen made a motion to include the district court clerks proposed amendments in **SB 482** and to pass the bill out favorably as amended, Senator Harrington seconded. Carried.

Meeting adjourned at 11:02 a.m. The next scheduled meeting is Thursday, February 19.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/16/98

NAME	REPRESENTING
Kendra + Ed Simmer-Sexe	Landlords/Individuals
Rochelle Chronister	SRS
Candy Shively	SRS
Vicki-Lynn Kessel	Budget
Madym. Fearwell	Judicial Council
Jane Clark	KCDAA
SUZANNE WOODS	SRS
Mike Huttles	SRS
Steve Johnson	KS A SOAP Assn
Larry McClain	So Co
David Lord	KS Securities Commission off.
DAVID BRANT	KS SECURITIES COMMISSIONER
Heather Randall	Whitney Jamson, P.A.
Louise Ann Brown	KS Court Consult
Kathy Porter	OJA
MIKE TAYLOR	City of Wichita

ST 108
2-16-98
att. 1

Dear Senators:

I am here today as a landlord, but more importantly a concerned parent, special education teacher, child advocate and a taxpayer.

We have recently had to totally "remodel" a home that our tenants who were receiving public assistance destroyed (video available, if needed).

My husband and I try very hard to instill the values in our child of responsibility. These values entail having to suffer consequences for inappropriate behavior (time-out, natural consequences, etc.). As a teacher, I also feel that my students need the same guidance. It is very frustrating and angering to think that not everyone in our society has to be responsible for their actions.

There are many people in our community working hard for less fortunate people, myself included. I feel like this law is working against us. It is like enabling an alcoholic. Why should we as taxpayers give more and more when they are only on a destructive rampage? If their wages were garnished maybe they would think twice.

This is not a discriminatory or prejudice issue, but a moral issue. Do we want our children who are growing up in the "system" to be the same way?

Thank you for your time,



Kendra Simmer

Senate Judiciary
2-16-98
att. 1

**State of Kansas
Department of Social
& Rehabilitation Services**

Rochelle Chronister, Secretary
Janet Schalansky, Deputy Secretary

For additional information, contact:

SRS Office of Research
Suzanne Woods, Director
915 SW Harrison Street, Sixth Floor
Topeka, Kansas 66612-1570
☎785.296.3329 / Fax 785.296.4685

For fiscal information, contact:

SRS Finance Office
Diane Duffy, CFO
915 SW Harrison Street, Tenth Floor
Topeka, Kansas 66612-1570
☎785.296.6216 / Fax 785.296.4676



*5 Judd
2-16-98
att# 2*

**Senate Judiciary
Monday, February 16, 1998**

Testimony: SB 592

**Income Maintenance / Employment Preparation Services
Candy Shively, Commissioner
785.296.6750**

*Senate Judiciary
2-16-98
Att. 2*

Kansas Department of Social and Rehabilitation Services
Rochelle Chronister, Secretary

Senate Judiciary
SB 592

February 16, 1998

Mr. Chairman and Members of the Committee, thank you for allowing me to provide testimony today in opposition to Senate Bill 592. Welfare recipients are the poorest of the poor in Kansas. The maximum cash assistance grant for a family of three is \$403. For most welfare families, this is their only cash income. While a family may also receive food stamps and a medical card, by law these benefits can not be exchanged for cash. This means the \$403 is all that is available to pay for rent, utilities, food (food stamps are intended to cover only a portion of a family's food needs), household supplies, clothing, laundry, transportation, school activities, and other miscellaneous expenses. Keeping in mind that 80% of the welfare population does not receive subsidized rent, most of the \$403 is needed for rent. The welfare parent who can pay all of the monthly bills is an extraordinary financial manager.

My opposition to this bill does not mean that I believe welfare recipients should not be accountable for child support, damages, bill payment, etc. But we must be realistic as to what someone at this income level can be ordered to pay and what will happen to the children if the family's only cash income of \$403 is reduced by 25% to \$302 or by an even greater reduction. Given the bill payment juggling that we know must go on in order for welfare families to make ends meet, there could be more than one creditor knocking at the door seeking a piece of the welfare grant. Because public assistance grants are not considered earned income under the law, this income is not protected by the Consumer Credit Protection Act which generally limits garnishments to 25% of earnings. Therefore, an outside creditor could come in and take all of the welfare grant and leave the family with nothing to live on. This added stress puts the children at increased risk of abuse, neglect, or abandonment because the parent does not have within his or her control the ability to right the situation. Depending on the amount owed, garnishment could go on indefinitely.

Finally, public assistance grants are tax-based funds provided to families to meet their basic needs. Garnishments should be restricted to non-public funds. Allowing creditors to garnish tax money to satisfy a private debt is a dangerous precedent to set. In doing so a safety net would be provided for creditors rather than for the needy.



5-5-98
#3

KANSAS

Bill Graves
Governor

OFFICE OF THE SECURITIES COMMISSIONER

David R. Brant
Securities Commissioner

February 2, 1998

HAND DELIVERED

Hon. Tim Emert, Chairman
Senate Judiciary Committee
State Capitol
Topeka, KS 66612

Re: Senate Bill No. 482 concerning Expungement

Dear Senator:

Attached for your consideration are proposed amendments to Senate Bill No. 482 which would add the Securities Commissioner as an agency which is entitled to expunged data for persons applying for securities licenses.

These proposed amendments have been lifted from House Bill No. 2232 which was introduced by the House Judiciary Committee last year at my request.

It may be appropriate and more convenient for your committee to consider these amendments rather than to have the House Judiciary Committee merge the two bills.

I would be glad to testify as to the need for our agency to have access to expunged records.

Please call me at 296-2607 if you have any questions. Thank you for your consideration.

Very truly yours,

David Brant

DAVID BRANT
Securities Commissioner

cc: Senator Paul Feleciano

COPY

Session of 1998

SENATE BILL No. 482

By Committee on Judiciary

1-22

9 AN ACT concerning expungement; relating to diversion agreements; ar-
10 rest records; violations of city ordinances; amending K.S.A. 1997 Supp.
11 12-4516 and 21-4619 and repealing the existing sections; also repealing
12 K.S.A. 1997 Supp. 21-4619b.

13

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

15 New Section 1. For purposes of this act, "expungement" means the
16 sealing of records such that they are unavailable except to the petitioner
17 and criminal justice agencies as provided by K.S.A. 22-4701, *et seq.* and
18 amendments thereto and except as provided in this act.

19 New Sec. 2. (a) Any person who has been arrested on a violation
20 of a city ordinance of this state may petition the court for the expunge-
21 ment of such arrest record.

22 (b) When a petition for expungement is filed, the court shall set a
23 date for hearing on such petition and shall cause notice of such hearing
24 to be given to the prosecuting attorney and the arresting law enforcement
25 agency. The petition shall state: (1) The petitioner's full name;

26 (2) the full name of the petitioner at the time of arrest, if different
27 than the petitioner's current name;

28 (3) the petitioner's sex, race and date of birth;

29 (4) the crime for which the petitioner was arrested;

30 (5) the date of the petitioner's arrest, and

31 (6) the identity of the arresting law enforcement agency.

32 A municipal court may prescribe a fee to be charged as costs for a
33 person petitioning for an order of expungement pursuant to this section.
34 Any person who may have relevant information about the petitioner may
35 testify at the hearing. The court may inquire into the background of the
36 petitioner.

37 (c) At the hearing on a petition for expungement, the court shall order
38 the arrest record and subsequent court proceedings, if any, expunged
39 upon finding: (1) The arrest occurred because of mistaken identity;

40 (2) a court has found that there was no probable cause for the arrest;

41 (3) the petitioner was found not guilty in court proceedings; or

42 (4) the expungement would be in the best interests of justice and (A)
43 Charges have been dismissed; or (B) no charges have been or are likely

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1 to be filed.

2 (d) When the court has ordered expungement of an arrest record and
3 subsequent court proceedings, if any, the order shall state the information
4 required to be stated in the petition and shall state the grounds for
5 expungement under subsection (c). The clerk of the court shall send a
6 certified copy of the order to the federal bureau of investigation, the
7 Kansas bureau of investigation, the secretary of corrections and any other

7 Kansas bureau of investigation, the secretary of corrections and any other
8 criminal justice agency which may have a record of the arrest. If an order
9 of expungement is entered, the petitioner shall be treated as not having
10 been arrested.

11 (e) If the ground for expungement is as provided in subsection (c)(4),
12 the court shall determine whether, in the interest of public welfare, the
13 records should be available for any of the following purposes: (1) In any
14 application for employment as a detective with a private detective agency,
15 as defined by K.S.A. 75-7b01 and amendments thereto; as security per-
16 sonnel with a private patrol operator, as defined by K.S.A. 75-7b01 and
17 amendments thereto; with a criminal justice agency, as defined by K.S.A.
18 22-4701 and amendments thereto; or with an institution, as defined in
19 K.S.A. 76-12a01 and amendments thereto, of the department of social
20 and rehabilitation services;

21 (2) in any application for admission, or for an order of reinstatement,
22 to the practice of law in this state;

23 (3) to aid in determining the petitioner's qualifications for employ-
24 ment with the Kansas lottery or for work in sensitive areas within the
25 Kansas lottery as deemed appropriate by the executive director of the
26 Kansas lottery;

27 (4) to aid in determining the petitioner's qualifications for executive
28 director of the Kansas racing commission, for employment with the com-
29 mission or for work in sensitive areas in parimutuel racing as deemed
30 appropriate by the executive director of the commission, or to aid in
31 determining qualifications for licensure or renewal of licensure by the
32 commission;

33 (5) in any application for a commercial driver's license under K.S.A.
34 8-2,125 through 8-2,142 and amendments thereto;

35 (6) to aid in determining the petitioner's qualifications to be an em-
36 ployee of the state gaming agency;

37 (7) to aid in determining the petitioner's qualifications to be an em-
38 ployee of a tribal gaming commission or to hold a license issued pursuant
39 to a tribal-state gaming compact; or

40 (8) in any other circumstances which the court deems appropriate.

41 (f) Subject to any disclosures required under subsection (e), in any
42 application for employment, license or other civil right or privilege, or
43 any appearance as a witness, a person whose arrest records have been

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1 expunged as provided in this section may state that such person has never
2 been arrested.

3 (g) Whenever a petitioner's arrest records have been expunged as
4 provided in this section, the custodian of the records of arrest, incarceration
5 due to arrest or court proceedings related to the arrest, shall not
6 disclose the arrest or any information related to the arrest, except as
7 directed by the order of expungement or when requested by the person
8 whose arrest record was expunged.

9 New Sec. 3. (a) Any person who has been arrested in this state may
10 petition the district court for the expungement of such arrest record.

11 (b) When a petition for expungement is filed, the court shall set a
12 date for hearing on such petition and shall cause notice of such hearing
13 to be given to the prosecuting attorney and the arresting law enforcement
14 agency. The petition shall state: (1) The petitioner's full name;

15 (2) the full name of the petitioner at the time of arrest, if different
16 than the petitioner's current name;

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- 17 (3) the petitioner's sex, race and date of birth;
 - 18 (4) the crime for which the petitioner was arrested;
 - 19 (5) the date of the petitioner's arrest; and
 - 20 (6) the identity of the arresting law enforcement agency.
- 21 There shall be no docket fee for filing a petition pursuant to this sec-
- 22 tion. Any person who may have relevant information about the petitioner
- 23 may testify at the hearing. The court may inquire into the background of
- 24 the petitioner.
- 25 (c) At the hearing on a petition for expungement, the court shall order
- 26 the arrest record and subsequent court proceedings, if any, expunged
- 27 upon finding: (1) The arrest occurred because of mistaken identity;
- 28 (2) a court has found that there was no probable cause for the arrest;
- 29 (3) the petitioner was found not guilty in court proceedings; or
- 30 (4) the expungement would be in the best interests of justice and (A)
- 31 Charges have been dismissed; or (B) no charges have been or are likely
- 32 to be filed.
- 33 (d) When the court has ordered expungement of an arrest record and
- 34 subsequent court proceedings, if any, the order shall state the information
- 35 required to be stated in the petition and shall state the grounds for
- 36 expungement under subsection (c). The clerk of the court shall send a
- 37 certified copy of the order to the federal bureau of investigation, the
- 38 Kansas bureau of investigation, the secretary of corrections and any other
- 39 criminal justice agency which may have a record of the arrest. If an order
- 40 of expungement is entered, the petitioner shall be treated as not having
- 41 been arrested.
- 42 (e) If the ground for expungement is as provided in subsection (c)(4),
- 43 the court shall determine whether, in the interests of public welfare, the

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- 1 records should be available for any of the following purposes: (1) In any
- 2 application for employment as a detective with a private detective agency,
- 3 as defined in K.S.A. 75-7b01 and amendments thereto; as security per-
- 4 sonnel with a private patrol operator, as defined by K.S.A. 75-7b01 and
- 5 amendments thereto; with a criminal justice agency, as defined by K.S.A.
- 6 22-4701 and amendments thereto; or with an institution, as defined in
- 7 K.S.A. 76-12a01 and amendments thereto, of the department of social
- 8 and rehabilitation services;
- 9 (2) in any application for admission, or for an order of reinstatement,
- 10 to the practice of law in this state;
- 11 (3) to aid in determining the petitioner's qualifications for employ-
- 12 ment with the Kansas lottery or for work in sensitive areas within the
- 13 Kansas lottery as deemed appropriate by the executive director of the
- 14 Kansas lottery;
- 15 (4) to aid in determining the petitioner's qualifications for executive
- 16 director of the Kansas racing commission, for employment with the com-
- 17 mission or for work in sensitive areas in parimutuel racing as deemed
- 18 appropriate by the executive director of the commission, or to aid in
- 19 determining qualifications for licensure or renewal of licensure by the
- 20 commission;
- 21 (5) in any application for a commercial driver's license under K.S.A.
- 22 8-2,125 through 8-2,142 and amendments thereto;
- 23 (6) to aid in determining the petitioner's qualifications to be an em-
- 24 ployee of the state gaming agency;
- 25 (7) to aid in determining the petitioner's qualifications to be an em-
- 26 ployee of a tribal gaming commission or to hold a license issued pursuant

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27 to a tribal-state gaming compact; or
 28 (8) in any other circumstances which the court deems appropriate.
 29 (f) Subject to any disclosures required under subsection (e), in any
 30 application for employment, license or other civil right or privilege, or
 31 any appearance as a witness, a person whose arrest records have been
 32 expunged as provided in this section may state that such person has never
 33 been arrested.
 34 (g) Whenever a petitioner's arrest records have been expunged as
 35 provided in this section, the custodian of the records of arrest, incarceration
 36 due to arrest or court proceedings related to the arrest, shall not
 37 disclose the arrest or any information related to the arrest, except as
 38 directed by the order of expungement or when requested by the person
 39 whose arrest record was expunged.
 40 Sec. 4. K.S.A. 1997 Supp. 12-4516 is hereby amended to read as
 41 follows: 12-4516. (a) (1) Except as provided in subsection (b), any person
 42 who has been convicted of a violation of a city ordinance of this state
 43 may petition the convicting court for the expungement of such conviction

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1 *and related arrest records* if three or more years have elapsed since the
 2 person:
 3 (1) ~~(A)~~ Satisfied the sentence imposed; or
 4 (2) ~~(B)~~ was discharged from probation, parole or a suspended sen-
 5 tence.
 6 (2) *Except as provided in subsection (b), any person who has fulfilled*
 7 *the terms of a diversion agreement based on a violation of a city ordinance*
 8 *of this state may petition the court for the expungement of such diversion*
 9 *agreement and related arrest records if three or more years have elapsed*
 10 *since the terms of the diversion agreement were fulfilled.*
 11 (b) No person may petition for expungement until five or more years
 12 have elapsed since the person satisfied the sentence imposed *or the terms*
 13 *of a diversion agreement* or was discharged from probation, parole, con-
 14 ditional release or a suspended sentence, if such person was convicted of
 15 the violation of a city ordinance which would also constitute:
 16 (1) Vehicular homicide, as defined by K.S.A. 21-3405, and amend-
 17 ments thereto;
 18 (2) a violation of K.S.A. 8-1567, and amendments thereto;
 19 (3) driving while the privilege to operate a motor vehicle on the public
 20 highways of this state has been canceled, suspended or revoked, as pro-
 21 hibited by K.S.A. 8-262, and amendments thereto;
 22 (4) perjury resulting from a violation of K.S.A. 8-261a, and amend-
 23 ments thereto;
 24 (5) a violation of the provisions of the fifth clause of K.S.A. 8-142,
 25 and amendments thereto, relating to fraudulent applications;
 26 (6) any crime punishable as a felony wherein a motor vehicle was
 27 used in the perpetration of such crime;
 28 (7) failing to stop at the scene of an accident and perform the duties
 29 required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto;
 30 (8) a violation of the provisions of K.S.A. 40-3104, and amendments
 31 thereto, relating to motor vehicle liability insurance coverage; or
 32 (9) a violation of K.S.A. 21-3405b, and amendments thereto.
 33 (c) When a petition for expungement is filed, the court shall set a
 34 date for a hearing; ~~(tri-stars)ereon of such petition~~ and shall give cause notice
 35 ~~(tri-stars)ereof of such hearing to be given to the prosecuting attorney and the~~
 36 *arresting law enforcement agency.* The petition shall state: (1) The de-

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- 37 defendant's full name;
- 38 (2) the full name of the defendant at the time of arrest and conviction
- 39 or diversion, if different than the defendant's current name;
- 40 (3) the defendant's sex, race, and date of birth;
- 41 (4) the crime for which the defendant was arrested, convicted or di-
- 42 verted;
- 43 (5) the date of the defendant's arrest, conviction or diversion; and

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1 (6) the identity of the convicting court, *arresting law enforcement*
 2 *agency or diverting authority*. A municipal court may prescribe a fee to
 3 be charged as costs for a person petitioning for an order of expungement
 4 pursuant to this section. Any person who may have relevant information
 5 about the petitioner may testify at the hearing. The court may inquire
 6 into the background of the petitioner and shall have access to any reports
 7 or records relating to the petitioner that are on file with the secretary of
 8 corrections or the Kansas parole board.

9 (d) At the hearing on the petition, the court shall order the peti-
 10 tioner's *arrest record, conviction or diversion* expunged if the court finds
 11 that:

12 (1) The petitioner has not been convicted of a felony in the past two
 13 years and no proceeding involving any such crime is presently pending
 14 or being instituted against the petitioner;

15 (2) the circumstances and behavior of the petitioner warrant the
 16 expungement; and

17 (3) the expungement is consistent with the public welfare.

18 (e) When the court has ordered ~~a~~ *an arrest record, conviction or*
 19 *diversion* expunged, the order of expungement shall state the information
 20 required to be contained in the petition. The clerk of the court shall send
 21 a certified copy of the order of expungement to the Kansas bureau of
 22 investigation which shall notify the federal bureau of investigation, the
 23 secretary of corrections and any other criminal justice agency which may
 24 have a record of the *arrest, conviction or diversion*. After the order of
 25 expungement is entered, the petitioner shall be treated as not having been
 26 *arrested, convicted or diverted* of the crime, except that:

27 (1) Upon conviction for any subsequent crime, the conviction that
 28 was expunged may be considered as a prior conviction in determining the
 29 sentence to be imposed;

30 (2) the petitioner shall disclose that the *arrest, conviction or diversion*
 31 occurred if asked about previous *arrests, convictions or diversions*:

32 (A) in any application for employment as a detective with a private
 33 detective agency, as defined by K.S.A. 75-7b01, and amendments thereto;
 34 as security personnel with a private patrol operator, as defined by K.S.A.
 35 75-7b01, and amendments thereto; with a criminal justice agency, as de-
 36 fined by K.S.A. 22-4701, and amendments thereto; or with an institution,
 37 as defined in K.S.A. 76-12a01, and amendments thereto, of the depart-
 38 ment of social and rehabilitation services;

39 (B) in any application for admission, or for an order of reinstatement,
 40 to the practice of law in this state;

41 (C) to aid in determining the petitioner's qualifications for employ-
 42 ment with the Kansas lottery or for work in sensitive areas within the
 43 Kansas lottery as deemed appropriate by the executive director of the

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1 Kansas lottery;

2 (D) to aid in determining the petitioner's qualifications for executive
3 director of the Kansas racing commission, for employment with the com-
4 mission or for work in sensitive areas in parimutuel racing as deemed
5 appropriate by the executive director of the commission, or to aid in
6 determining qualifications for licensure or renewal of licensure by the
7 commission;

8 (E) upon application for a commercial driver's license under K.S.A.
9 8-2,125 through 8-2,142, and amendments thereto;

10 (F) to aid in determining the petitioner's qualifications to be an em-
11 ployee of the state gaming agency; or

12 (G) to aid in determining the petitioner's qualifications to be an em-
13 ployee of a tribal gaming commission or to hold a license issued pursuant
14 to a tribal-state gaming compact;

or

15 (3) the court, in the order of expungement, may specify other cir-
16 cumstances under which the *arrest, conviction or diversion* is to be dis-
17 closed; and

(H) in any application
for registration as a
broker-dealer, agent,
investment adviser, or
investment adviser
representative as defined
by K.S.A. 17-1252, and
amendments thereto;

18 (4) the conviction may be disclosed in a subsequent prosecution for
19 an offense which requires as an element of such offense a prior conviction
20 of the type expunged.

21 (f) Whenever a person is convicted of an ordinance violation, pleads
22 guilty and pays a fine for such a violation, is placed on parole or probation
23 or is granted a suspended sentence for such a violation, the person shall
24 be informed of the ability to expunge the *arrest records* or conviction.
25 *Whenever a person enters into a diversion agreement, the person shall be*
26 *informed of the ability to expunge the diversion.*

27 (g) Subject to the disclosures required pursuant to subsection (e), in
28 any application for employment, license or other civil right or privilege,
29 or any appearance as a witness, a person whose *arrest records, conviction*
30 *or diversion* of an offense has been expunged under this statute may state
31 that such person has never been *arrested, convicted or diverted* of such
32 offense.

33 (h) Whenever the record of any *arrest, conviction or diversion* has
34 been expunged under the provisions of this section or under the provi-
35 sions of any other existing or former statute, the custodian of the records
36 of arrest, conviction, *diversion* and incarceration relating to that crime
37 shall not disclose the existence of such records, except when requested
38 by:

39 (1) The person whose record was expunged;

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

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1 punged;

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

4 (4) the secretary of social and rehabilitation services, or a designee of
5 the secretary, for the purpose of obtaining information relating to em-
6 ployment in an institution, as defined in K.S.A. 76-12a01, and amend-
7 ments thereto, of the department of social and rehabilitation services of
8 any person whose record has been expunged;

9 (5) a person entitled to such information pursuant to the terms of the

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10 expungement order;

11 (6) a prosecuting attorney, and such request is accompanied by a
12 statement that the request is being made in conjunction with a prosecu-
13 tion of an offense that requires a prior conviction as one of the elements
14 of such offense;

15 (7) the supreme court, the clerk or disciplinary administrator thereof,
16 the state board for admission of attorneys or the state board for discipline
17 of attorneys, and the request is accompanied by a statement that the
18 request is being made in conjunction with an application for admission,
19 or for an order of reinstatement, to the practice of law in this state by the
20 person whose record has been expunged;

21 (8) the Kansas lottery, and the request is accompanied by a statement
22 that the request is being made to aid in determining qualifications for
23 employment with the Kansas lottery or for work in sensitive areas within
24 the Kansas lottery as deemed appropriate by the executive director of the
25 Kansas lottery;

26 (9) the governor or the Kansas racing commission, or a designee of
27 the commission, and the request is accompanied by a statement that the
28 request is being made to aid in determining qualifications for executive
29 director of the commission, for employment with the commission, for
30 work in sensitive areas in parimutuel racing as deemed appropriate by
31 the executive director of the commission or for licensure, renewal of
32 licensure or continued licensure by the commission; or -

33 (10) the state gaming agency, and the request is accompanied by a
34 statement that the request is being made to aid in determining qualifi-
35 cations: (A) To be an employee of the state gaming agency; or (B) to be
36 an employee of a tribal gaming commission or to hold a license issued
37 pursuant to a tribal-state gaming compact. -

38 Sec. 5. K.S.A. 1997 Supp. 21-4619 is hereby amended to read as
39 follows: 21-4619. (a) (1) Except as provided in subsections (b) and (c),
40 any person convicted in this state of a traffic infraction, cigarette or to-
41 bacco infraction, misdemeanor or a class D or E felony, or for crimes
42 committed on or after July 1, 1993, nondrug crimes ranked in severity
43 levels 6 through 10 or any felony ranked in severity level 4 of the drug

; or -
(11) the Kansas securities commissioner, or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser, or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged.

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1 grid, may petition the convicting court for the expungement of such con-
2 viction or related arrest records if three or more years have elapsed since
3 the person: ~~(1)-(A)~~ Satisfied the sentence imposed; or ~~(2)-(B)~~ was dis-
4 charged from probation, a community correctional services program, pa-
5 role, postrelease supervision, conditional release or a suspended sentence.

6 (2) Except as provided in subsections (b) and (c), any person who has
7 fulfilled the terms of a diversion agreement may petition the district court
8 for the expungement of such diversion agreement and related arrest rec-
9 ords if three or more years have elapsed since the terms of the diversion
10 agreement were fulfilled.

11 (b) Except as provided in subsection (c), no person may petition for
12 expungement until five or more years have elapsed since the person sat-
13 isfied the sentence imposed, the terms of a diversion agreement or was
14 discharged from probation, a community correctional services program,
15 parole, postrelease supervision, conditional release or a suspended sen-
16 tence, if such person was convicted of a class A, B or C felony, or for
17 crimes committed on or after July 1, 1993, if convicted of an off-grid
18 felony or any nondrug crime ranked in severity levels 1 through 5 or any
19 felony ranked in severity levels 1 through 3 of the drug grid, or:

38

- 20 (1) Vehicular homicide, as defined by K.S.A. 21-3405 and amend-
- 21 ments thereto or as prohibited by any law of another state which is in
- 22 substantial conformity with that statute;
- 23 (2) a violation of K.S.A. 8-1567 and amendments thereto, or a viola-
- 24 tion of any law of another state, which declares to be unlawful the acts
- 25 prohibited by that statute;
- 26 (3) driving while the privilege to operate a motor vehicle on the public
- 27 highways of this state has been canceled, suspended or revoked, as pro-
- 28 hibited by K.S.A. 8-262 and amendments thereto or as prohibited by any
- 29 law of another state which is in substantial conformity with that statute;
- 30 (4) perjury resulting from a violation of K.S.A. 8-261a and amend-
- 31 ments thereto or resulting from the violation of a law of another state
- 32 which is in substantial conformity with that statute;
- 33 (5) violating the provisions of the fifth clause of K.S.A. 8-142 and
- 34 amendments thereto, relating to fraudulent applications or violating the
- 35 provisions of a law of another state which is in substantial conformity with
- 36 that statute;
- 37 (6) any crime punishable as a felony wherein a motor vehicle was
- 38 used in the perpetration of such crime;
- 39 (7) failing to stop at the scene of an accident and perform the duties
- 40 required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto,
- 41 or required by a law of another state which is in substantial conformity
- 42 with those statutes;
- 43 (8) violating the provisions of K.S.A. 40-3104 and amendments

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- 1 thereto, relating to motor vehicle liability insurance coverage; or
- 2 (9) a violation of K.S.A. 21-3405b, and amendments thereto.
- 3 (c) There shall be no expungement of convictions for the following
- 4 offenses or of convictions for an attempt to commit any of the following
- 5 offenses: (1) Rape as defined in subsection (a)(2) of K.S.A. 21-3502 and
- 6 amendments thereto; (2) indecent liberties with a child as defined in
- 7 K.S.A. 21-3503 and amendments thereto; (3) aggravated indecent liber-
- 8 ties with a child as defined in K.S.A. 21-3504 and amendments thereto;
- 9 (4) criminal sodomy as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-
- 10 3505 and amendments thereto; (5) aggravated criminal sodomy as defined
- 11 in K.S.A. 21-3506 and amendments thereto; (6) indecent solicitation of a
- 12 child as defined in K.S.A. 21-3510 and amendments thereto; (7) aggra-
- 13 vated indecent solicitation of a child as defined in K.S.A. 21-3511 and
- 14 amendments thereto; (8) sexual exploitation of a child as defined in K.S.A.
- 15 21-3516 and amendments thereto; (9) aggravated incest as defined in
- 16 K.S.A. 21-3603 and amendments thereto; (10) endangering a child as
- 17 defined in K.S.A. 21-3608 and amendments thereto; (11) abuse of a child
- 18 as defined in K.S.A. 21-3609 and amendments thereto; or (12) any con-
- 19 viction for any offense in effect at any time prior to the effective date of
- 20 this act, that is comparable to any offense as provided in this subsection.
- 21 (d) When a petition for expungement is filed, the court shall set a
- 22 date for a hearing ~~;(tri-stars)ereon of such petition~~ and shall ~~give-cause~~ notice
- 23 ~~;(tri-stars)ereof of such hearing to be given to the prosecuting attorney and the~~
- 24 ~~arresting law enforcement agency.~~ The petition shall state: (1) The de-
- 25 fendant's full name;
- 26 (2) the full name of the defendant at the time of arrest ~~and~~, conviction
- 27 ~~or diversion~~, if different than the defendant's current name;
- 28 (3) the defendant's sex, race and date of birth;
- 29 (4) the crime for which the defendant was *arrested, convicted or di-*

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30 *verted*;
 31 (5) the date of the defendant's *arrest, conviction or diversion*; and
 32 (6) the identity of the convicting court, *arresting law enforcement*
 33 *authority or diverting authority*. There shall be no docket fee for filing a
 34 petition pursuant to this section. All petitions for expungement shall be
 35 docketed in the original criminal action. Any person who may have rel-
 36 evant information about the petitioner may testify at the hearing. The
 37 court may inquire into the background of the petitioner and shall have
 38 access to any reports or records relating to the petitioner that are on file
 39 with the secretary of corrections or the Kansas parole board.
 40 (e) At the hearing on the petition, the court shall order the peti-
 41 tioner's *arrest record, conviction or diversion* expunged if the court finds
 42 that:
 43 (1) The petitioner has not been convicted of a felony in the past two

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1 years and no proceeding involving any such crime is presently pending
 2 or being instituted against the petitioner;
 3 (2) the circumstances and behavior of the petitioner warrant the
 4 expungement; and
 5 (3) the expungement is consistent with the public welfare.
 6 (f) When the court has ordered ~~a~~ *an arrest record, conviction or di-*
 7 *version* expunged, the order of expungement shall state the information
 8 required to be contained in the petition. The clerk of the court shall send
 9 a certified copy of the order of expungement to the Kansas bureau of
 10 investigation which shall notify the federal bureau of investigation, the
 11 secretary of corrections and any other criminal justice agency which may
 12 have a record of the *arrest, conviction or diversion*. After the order of
 13 expungement is entered, the petitioner shall be treated as not having been
 14 *arrested, convicted or diverted* of the crime, except that:
 15 (1) Upon conviction for any subsequent crime, the conviction that
 16 was expunged may be considered as a prior conviction in determining the
 17 sentence to be imposed;
 18 (2) the petitioner shall disclose that the *arrest, conviction or diversion*
 19 occurred if asked about previous *arrests, convictions or diversions*: (A) In
 20 any application for employment as a detective with a private detective
 21 agency, as defined by K.S.A. 75-7b01 and amendments thereto; as se-
 22 curity personnel with a private patrol operator, as defined by K.S.A. 75-
 23 7b01 and amendments thereto; with a criminal justice agency, as defined
 24 by K.S.A. 22-4701 and amendments thereto; or with an institution, as
 25 defined in K.S.A. 76-12a01 and amendments thereto, of the department
 26 of social and rehabilitation services;
 27 (B) in any application for admission, or for an order of reinstatement,
 28 to the practice of law in this state;
 29 (C) to aid in determining the petitioner's qualifications for employ-
 30 ment with the Kansas lottery or for work in sensitive areas within the
 31 Kansas lottery as deemed appropriate by the executive director of the
 32 Kansas lottery;
 33 (D) to aid in determining the petitioner's qualifications for executive
 34 director of the Kansas racing commission, for employment with the com-
 35 mission or for work in sensitive areas in parimutuel racing as deemed
 36 appropriate by the executive director of the commission, or to aid in
 37 determining qualifications for licensure or renewal of licensure by the
 38 commission; ~~or~~
 39 (E) upon application for a commercial driver's license under K.S.A.

40 8-2,125 through 8-2,142, and amendments thereto;
 41 (F) to aid in determining the petitioner's qualifications to be an em-
 42 ployee of the state gaming agency; ~~or~~-
 43 (G) to aid in determining the petitioner's qualifications to be an em-

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1 ployee of a tribal gaming commission or to hold a license issued pursuant
 2 to a tribal-state gaming compact; ~~or~~

3 (3) the court, in the order of expungement, may specify other cir-
 4 cumstances under which the conviction is to be disclosed;

5 (4) the conviction may be disclosed in a subsequent prosecution for
 6 an offense which requires as an element of such offense a prior conviction
 7 of the type expunged; and

8 (5) upon commitment to the custody of the secretary of corrections,
 9 any previously expunged record in the possession of the secretary of cor-
 10 rections may be reinstated and the expungement disregarded, and the
 11 record continued for the purpose of the new commitment.

12 (g) Whenever a person is convicted of a crime, pleads guilty and pays
 13 a fine for a crime, is placed on parole, postrelease supervision or proba-
 14 tion, is assigned to a community correctional services program, is granted
 15 a suspended sentence or is released on conditional release, the person
 16 shall be informed of the ability to expunge the *arrest records* or convic-
 17 tion. *Whenever a person enters into a diversion agreement, the person*
 18 *shall be informed of the ability to expunge the diversion.*

19 (h) Subject to the disclosures required pursuant to subsection (f), in
 20 any application for employment, license or other civil right or privilege,
 21 or any appearance as a witness, a person whose *arrest records*, conviction
 22 or *diversion* of a crime has been expunged under this statute may state
 23 that such person has never been *arrested*, convicted or *diverted* of such
 24 crime, but the expungement of a felony conviction does not relieve an
 25 individual of complying with any state or federal law relating to the use
 26 or possession of firearms by persons convicted of a felony.

27 (i) Whenever the record of any *arrest*, conviction or *diversion* has
 28 been expunged under the provisions of this section or under the provi-
 29 sions of any other existing or former statute, the custodian of the records
 30 of arrest, conviction, *diversion* and incarceration relating to that crime
 31 shall not disclose the existence of such records, except when requested
 32 by:

- 33 (1) The person whose record was expunged;
- 34 (2) a criminal justice agency, private detective agency or a private
 35 patrol operator, and the request is accompanied by a statement that the
 36 request is being made in conjunction with an application for employment
 37 with such agency or operator by the person whose record has been ex-
 38 punged;

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

41 (4) the secretary of social and rehabilitation services, or a designee of
 42 the secretary, for the purpose of obtaining information relating to em-
 43 ployment in an institution, as defined in K.S.A. 76-12a01 and amend-

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1 ments thereto, of the department of social and rehabilitation services of
 2 any person whose record has been expunged;

or
 (H) in any application
 for registration as a
 broker-dealer, agent,
 investment adviser, or
 investment adviser
 representative as defined
 by K.S.A. 17-1252, and
 and amendments thereto.

3 (5) a person entitled to such information pursuant to the terms of the
4 expungement order;

5 (6) a prosecuting attorney, and such request is accompanied by a
6 statement that the request is being made in conjunction with a prosecu-
7 tion of an offense that requires a prior conviction as one of the elements
8 of such offense;

9 (7) the supreme court, the clerk or disciplinary administrator thereof,
10 the state board for admission of attorneys or the state board for discipline
11 of attorneys, and the request is accompanied by a statement that the
12 request is being made in conjunction with an application for admission,
13 or for an order of reinstatement, to the practice of law in this state by the
14 person whose record has been expunged;

15 (8) the Kansas lottery, and the request is accompanied by a statement
16 that the request is being made to aid in determining qualifications for
17 employment with the Kansas lottery or for work in sensitive areas within
18 the Kansas lottery as deemed appropriate by the executive director of the
19 Kansas lottery;

20 (9) the governor or the Kansas racing commission, or a designee of
21 the commission, and the request is accompanied by a statement that the
22 request is being made to aid in determining qualifications for executive
23 director of the commission, for employment with the commission, for
24 work in sensitive areas in parimutuel racing as deemed appropriate by
25 the executive director of the commission or for licensure, renewal of
26 licensure or continued licensure by the commission; or

27 (10) the Kansas sentencing commission; ~~or~~ -

28 (11) *the state gaming agency, and the request is accompanied by a*
29 *statement that the request is being made to aid in determining qualifica-*
30 *tions: (A) To be an employee of the state gaming agency; or (B) to be an*
31 *employee of a tribal gaming commission or to hold a license issued pur-*
32 *suant to a tribal-gaming compact;* -

33 Sec. 6. K.S.A. 1997 Supp. 12-4516, 21-4619 and 21-4619b are hereby
34 repealed.

35 Sec. 7. This act shall take effect and be in force from and after its
36 publication in the statute book.
37

; or -
(12) the Kansas securities commissioner, or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser, or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged.



City of Wichita

Testimony

**Regarding
Senate Bill 482**

**Delivered to
Senate Judiciary Committee
January 28, 1998**

Senate Bill 482 mandates that any person may request expungement of municipal court records relating to arrests, diversions and convictions of city ordinances. The City of Wichita has a number of concerns about the impact Senate Bill 482 will have on its Municipal Court. Court officials predict administering the provisions of the bill will be costly, difficult and amount to an unfunded State mandate on Cities and Counties.

The law could open a floodgate of expungement requests. With the large volume of cases handled by municipal court, just keeping up with the paperwork would be a massive and expensive chore. The records check associated with the process would require a lot of extra staff. While a fee can be charged to process the expungement request, it may not be enough to offset the costs. If the expungement is granted, the Municipal Court Clerk must send notice of the order to the FBI, the KBI, the Secretary of Corrections and any other criminal justice agency which may have record of the arrest. Again, extra work and costs.

But it doesn't end with simply erasing the record and sending out notices. Because the arrest information may still need to be available to law enforcement agencies and for various other reasons as set forth in the statute, the records would still have to be maintained in some fashion. Despite the expungement, they cannot be completely deleted out of the database, so the expunged records must then be placed in a separate data base with limited access. The case file concerning an arrest stored in the records section of the Wichita Police Department would have to be physically removed and stored in a separate file which only certain persons could access. Since the Sedgwick County Jail incarcerates all persons for the City of Wichita, notice would have to be sent so the Sheriff can also delete the records. Mug shots and fingerprints would have to be pulled from files and segregated into a separate file or database. Every time information is requested by law enforcement about a person's criminal records, two files or databases would have to be searched in order to catch any expunged information. With the heavy volume of cases handled in Wichita, this creates an expensive and unwieldy situation for court officials and law enforcement authorities .

Senate Bill 482 also raises serious questions regarding law enforcement investigations. Pending covert investigations could be jeopardized if a person petitioned to have their arrest expunged and prosecutors were forced to reveal in court that they planned to charge the person. What about gang intelligence information? Much of it is generated from arrest information. If a gang member requests an expungement, a dual sealed database would have to be set up. And expunged

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att. 4*

information could not be used to help profile a gang member at subsequent trials.

The City of Wichita believes the mandates in Senate Bill 482 are unnecessary. Under the Criminal History Record Information Act and the current rules regarding expungements, arrests which do not result in convictions, or for which the resulting conviction has been expunged are not open to the public anyway. So allowing the expungement of these arrest records offers no benefit, but imposes a tremendous burden on law enforcement and court staff.

Allowing expungement of diversion agreements and the related arrest records are unnecessary for several reasons. The bill mandates that all persons going on diversion be told that they have the right to expunge the diversion. This provision would have to be added to existing diversion contracts, creating an avalanche of work for court officials. And again it is unnecessary because records of arrests which result in diversion are only public during the time the case is pending in court. The new law does not allow expungement at that stage anyway, so again there is lots of extra work, but no benefit to allowing expungement of diversions and related arrest records.

Not only would Senate Bill 482 create burdens for law enforcement, it is counterproductive to all of the efforts made in recent years to create and maintain an accurate and complete statewide criminal data base.

552-4115

**Testimony of Kansas Association of District Court Clerks and
Administrators
Wednesday, January 28, 1998
Senate Judiciary Committee**

To Chairman Emert and Committee Members:

I am here today representing the Kansas Association of District Court Clerks and Administrators.

We would ask that SB 482 be amended by deleting the second sentence of 22-2911(b) that states "The terms of a diversion agreement which have been fulfilled shall be confidential and shall be available only to any city, county or district attorney or court or the attorney general." The proposed amendment is attached to the testimony.

When a criminal or traffic diversion agreement is filed, it is an open case until the diversion is completed. Once the diversion is completed, the diversion agreement document then becomes confidential.

Closing these records is a time consuming process as there is on-going monitoring to know who has completed diversion. Once completed, the file has to be pulled, the diversion agreement placed in a sealed envelope, stamped confidential, refiled, and removed from the appearance docket. There is also the element of human error in missing some case or cases that should be confidential.

The diversion agreements in juvenile cases are handled somewhat differently in that some are confidential (under 14 years of age) and some remain open (14 years or older). For consistency, we would ask that juvenile cases also be allowed to be expunged.

Thank you for allowing me the time to speak to you. I will be happy to answer any questions if there are any.

*Senate Judiciary
2-16-98
ATP*

PROPOSED AMENDMENT

22-2911. Failure to fulfill diversion agreement; satisfactory fulfillment; records.

- (a) If the county or district attorney finds at the termination of the diversion period or any time prior to the termination of the diversion period that the defendant has failed to fulfill the terms of the specific diversion agreement, the county or district attorney shall inform the district court of such finding and the district court, after finding that the defendant has failed to fulfill the terms of the specific diversion agreement at a hearing thereon, shall resume the criminal proceedings on the complaint.
- (b) If the defendant has fulfilled the terms of the diversion agreement, the district court shall dismiss with prejudice the criminal charges filed against the defendant. ~~The terms of a diversion agreement which have been fulfilled shall be confidential and shall be available only to any city, county or district attorney or court or the attorney general.~~
- (c) The county or district attorney shall forward to the Kansas bureau of investigation a record of the fact that a defendant did or did not fulfill the terms of a diversion agreement required to be filed under K.S.A. 22-2909 and amendments thereto. Such record shall be made available upon request to any county, district or city attorney or court.
- (d) The county or district attorney shall forward to the division of vehicles of the state department of revenue a record of the fact that a defendant did or did not fulfill the terms of a diversion agreement required to be filed under K.S.A. 22-2909 and amendments thereto. Such record shall be made available to any city, county or district attorney or court.

History: L. 1978, ch. 131, S. 6; L. 1981, ch. 153, S. 2; L. 1982, ch. 145, S. 2; L. 1982, ch. 144, S. 9; L. 1985, ch. 79, S. 5; L. 1993, ch. 166, S. 3; July 1.