

January 26, 2011

Senator Thomas Owens  
Chairman, Senate Judiciary Committee  
Kansas Statehouse  
300 SW 10<sup>th</sup> Street, Room 559-S  
Topeka, Kansas 66612

**Re: S.B. 7 (DUI bill)  
Proponent of Sections 32 and 48 (expungement provisions)**

Dear Mr. Chairman and Committee:

I wish to focus on the expungement provisions found in Sections 32 and 48. The proposed amendment to current law is an excellent idea. My fellow defense attorneys and I are firmly in favor of such a change. I suspect the vast majority of the public also favors this change.

I practice criminal defense, including a good deal of DUI defense in the Kansas City and surrounding areas. I took to private practice after nearly 20 years as a state employee with the Board of Indigents Defense Services. I have represented people charged with DUI, or with felonies who also had unrelated DUI charges, for over twenty years. I serve as the Executive Director of the Kansas Association of Criminal Defense Lawyers. I also serve on the Criminal Advisory Committee to the Kansas Judicial Council, as well as the Johnson County Bar Association's Criminal Bench-Bar Committee and Municipal Bench-Bar Committee.

**Sections 32 and 48 provide a mechanism for people to finally close a past chapter of their lives.** Expungement has long been the method for people to move on with their lives after they have paid the price for their criminal conduct and then subsequently proven their commitment to a respectable lifestyle and actual change of heart by a period of law abiding behavior. The only way other than an expungement to clear one's criminal history is by Executive Pardon. That method is simply not a viable option for all but a very select few.

**It is important to note that Kansas law already provides for expungement of almost all crimes.** Only a few crimes are not subject to expungement: rape, indecent liberties with a child, aggravated indecent liberties with a child, criminal sodomy with a child between 14 and 16, aggravated criminal sodomy, indecent solicitation of a child, aggravated indecent solicitation of a child, sexual exploitation of a child, aggravated incest, child endangerment, aggravated child endangerment, child abuse, capital murder, first degree murder, second degree murder, voluntary manslaughter, involuntary manslaughter, sexual battery, aggravated sexual battery and driving a commercial vehicle under the influence. These are very serious, violent and dangerous crimes. There are obvious reasons a society might say that these crimes should not be erased from a person's criminal record. Most of them involve the death of a person, the violent sexual assault of a person or the sexual or physical abuse of a child. **DUI is simply not in the same class of crime.** The average citizen would not consider a person who picks up a DUI to be the same as a person convicted of murder, rape or child molestation. They should not be treated the same way.

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Lest anyone think the proposed amendment treats DUI too leniently, we should look at the other provisions of expungement under Kansas law. Traffic infractions, tobacco infractions, misdemeanors (other than sexual battery), pre-1993 felonies ranked "D" or "E" (the lowest levels), post-1993 felonies ranked "6 – 10" inclusive on the non-drug grid, and "4" on the drug grid are all expungable *three* years after the person has completed his obligations to the State of Kansas. Felonies this statute covers include burglary, forgery, some aggravated batteries, fraud, theft and arson. Other crimes require the person to wait *five* years after completing their obligations to apply for diversion. These include pre-1993 felonies ranked "A", "B", or "D" (the highest levels), post-1993 felonies ranked "1 – 5" inclusive on the non-drug grid, and "1 – 3" inclusive on the drug grid. Examples of felonies in this class are aggravated kidnapping, aggravated robbery, serious life-threatening aggravated batteries, sales of narcotics and methamphetamine manufacture. **The proposed amendment would allow DUI to be expunged only after ten years have elapsed since the person finished his sentence or probation, which is twice as long as the time requirements for expunging serious felonies.**

**One must remember that the statute does not provide for automatic expungement – it merely provides a way for the person who has waited a decade to request that a court review his situation to determine whether or not to close the file.** The prosecuting and arresting authorities will be notified and have the opportunity to oppose the petition if they think it appropriate. The "circumstances and behavior of the petitioner must warrant the expungement" and the expungement must be "consistent with public welfare." If the petitioner cannot convince the judge of his worthiness the expungement will not be granted.

**Lastly, expungement is not a free pass to the petitioner to commit more crimes without consequence.** If a person commits another crime, the record for the expunged case is ready and available. Prosecutors and courts still have access to the conviction. **It is still treated as a prior conviction for purposes of sentencing.** It can still be used as evidence if it otherwise meets the requirements of K.S.A. 60-455. **Expunged cases are available to governmental agencies as provided by the statute.** Expungement does not hide a conviction for purposes of a concealed handgun permit or application to become a law enforcement officer. The expunged case is still taken into account when applying for admission to the bar, to work as a private detective, to take certain positions with the Kansas lottery and gaming commission and many other situations.

Expungement used to be available to those convicted of DUI and who had adjusted their behavior to a safe and law abiding manner. **It should again be available to those who made a mistake but have taken responsibility for their actions and are upstanding members of our society.**

Thank you,

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