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House Judiciary Committee
Kansas House of Representatives

Re: Opposition to HB 2226

Committee Members:

I represent the City of Hiawatha and act as the city prosecutor for its municipal court. Please accept this letter as testimony in opposition to HB 2226.

The most obvious reason to oppose this bill is the tremendous financial burden this will place upon the State's rural municipal court systems. My city will incur substantial additional costs under the current bill. In addition to the number of hours that an attorney must spend drafting petitions for expungement at an hourly rate, the municipal court clerk will have to spend an enormous amount of time redacting records. I believe that most court clerks in our rural communities perform the duties of court clerk in addition to other work necessary to the city. My particular court clerk believes it would take an additional full-time employee to redact all documentation necessary to comply with existing requirements. This is after an order of expungement is granted by the Court.

Additionally, the bill would place upon a city prosecutor the nearly impossible task of tracking all the city's court cases for years after the case is disposed. The statute requires the filing of the expungement three years after "satisfaction of the sentence imposed." Fines and restitution are a part of that sentence. Many defendants in my municipal court do not satisfy their financial obligations until well-after the sentencing. Some unpaid obligations are sent to a collection agency, which may take years to collect the financial obligation due as part of the sentence. Obtaining the resources to correctly comply with the bill would impose a tremendous financial burden upon the city.

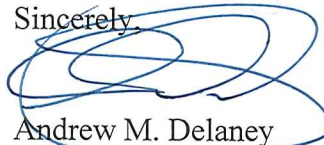
Most concerning for me is the attorney-client relationship this bill imposes upon the city prosecutor which does not comply with the Kansas Rules of Professional Conduct for Attorneys. The rules are quite clear in that an attorney cannot represent a client if that client's interests are adverse to another, namely the city's interests. Please refer to Rule 1.7 of the Kansas Rules of Professional Conduct for Attorneys. As the city prosecutor, I would have to get written informed consent from the defendant to comply with the rules. It is impractical to believe that all municipal court defendants will keep current contact information so each can be contacted to obtain consent and even more impractical that these defendants would sign the consent if given the opportunity.

This bill will create a scenario wherein the city prosecutor has an existing duty to the city and also an affirmative duty to a criminal defendant. If the city prosecutor does not agree that three years has expired since the sentence was satisfied but the criminal defendant disagrees, this bill will place the city prosecutor in an impossible position from an ethical standpoint. There is no practical way to comply to all duties required by the Kansas Rules of Professional Conduct.

Additionally, the bill would require the prosecuting attorney to file a petition that contains personal information about the defendant required in subsection (g), specifically affirmations regarding the defendant's criminal history. This would require, in my opinion, a nationwide criminal background check. For rural municipal courts, these resources are simply not available.

Petitions for expungement have become available at no cost on many websites here in the State. My city does not charge a filing fee. Currently, it is not difficult for a criminal defendant to file his or her own petition.

Sincerely,



Andrew M. Delaney
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