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City of Junction City

February 5, 2021

House Judiciary Committee

RE: Written Testimony In Opposition to House Bill 2226

Chairman Fred Patton and Members of the Committee:

The City of Junction City, Kansas is a City of the First Class. I serve the City as both City Attorney and the chief prosecutor: administrative, civil, and criminal. In my current position, I review the procedure by which the municipal court reviews and processes petitions for expungement. In addition, I review said petitions to determine whether the City will acquiesce or oppose petitions for expungement.

Prior to my over four years with the City, I worked for the State as a public defender in Riley, Morris, Dickinson, Clay, and Geary counties. I worked with many a defendant. Upon completion of their case, I advised my clients how to seek the expungement of both their convictions and arrests.

House Bill 2226 poses many issues and problems as currently drafted.

First, HB 2226 hurts the already tight budgets of municipalities. This Bill requires cities to hire more staff to implement this bill or forces them to redirect efforts from other required duties. The City of Junction City Municipal Court processed nearly 8,900 cases in 2020. It only has three court clerks; however, to start processing automatic expungements, one or two more clerks would need to be hired. Given the impact on the City, other cities would be in a similar crunch to fulfill these automatic expungements. The City does not have room in its budget to add more staff.

In addition to the court's duties, the Legal Department would need to hire additional staff and an attorney to aid with these reviews. Attorneys must ethically review matters in expungements. Otherwise, they would do a disservice to their communities. Since the defendants would not be filing a petition, the cities must conduct investigations into every single one of those 8,900 cases from 2020 come 2023.

To fund the above, cities may look to other funding options. Cities could add a new fund for court costs in municipal cases which would be dedicated to diversion review and processing. Currently, the City of Junction City does not assess a fee or cost for petitions for expungement. HB 2226 would erase that lack of payment by adding to the court costs assessed

Second, Retroactive laws have different effects. If a retroactive law is substantive (example of criminalizing an act) then its retroactive effect is prohibited by the *Ex Post Facto* Clause of the federal constitution. If a law is procedural, such as this bill purports to be, then it is retroactive and it does take effect. Upon publication, every single eligible conviction is automatically expunged from three years prior to publication to the founding of the State of Kansas. HB 2226 crushes an already beleaguered municipal judicial system which is backlogged by COVID-continuances.

Third, HB 2226 expunges unnecessarily. It requires the expungement of tobacco infractions, speeding tickets, failure to signal, et cetera. Traffic infractions and tobacco infraction make up the bulk of offenses which pass through municipal courts; however, they do not affect one's background or history as other offenses do. This creates unnecessary and burdensome work for municipal courts and legal staff which carries little to no benefit to former defendants.

Fourth, when evaluating the punishment of a criminal defendant, three purposes need to be evaluated: prevention, deterrence, and retribution. Is the defendant punished for the crime committed? Then there is retribution. Is the defendant less likely to commit the crime in the future? Then there is prevention. Does this diminish the chances of others to commit the crime in the future? Then there is deterrence. By automatically expunging nearly all municipal convictions, HB 2226 strips meaning from convictions as they affect future criminals. If the conviction evaporates one day then what worth does it have? Article 12, Section 5 of the Kansas Constitution bestows Home Rule upon the cities of Kansas; therefore, the value of local values and court proceedings shall be allowed as "[c]ities are hereby empowered to determine their local affairs and government". Cities cannot determine their local affairs and government if the convictions for the violations of their local laws carry little to no deterrent or preventative effects.

Fifth, HB 2226 ignores Article 15 of the Kansas Constitution and K.S.A. 74-7333. Both prescribe rights for victims of cases. These rights include communications and notifications for the courts. In addition, statute necessitates the "views and concerns of victims should be ascertained and the appropriate

assistance provided throughout the criminal process”. By giving automatic expungements, HB 2226 obviates victims’ notifications, communications, and rights.

Sixth, upon review of HB 2226, I find an easier solution would be to clarify the process and define the burden of proof. In K.S.A. 12-4516(h), you need only define the burden of proof upon the petitioner/criminal defendant as “clear and convincing evidence” or “preponderance of the evidence”. That way the courts and prosecuting attorneys know what satisfies the statute’s threshold.

Or in the alternative, you could include prohibitive or restrictive language on prosecutors such as “a prosecutor shall not oppose a petition for expungement unless the prosecutor can articulate probable cause, aside from the underlying offense, why said petition is inconsistent with the public welfare”. Either way, you clarify the petition process without unduly affecting the entire municipal criminal justice system.

Concerning evidence presented, I advise you follow K.S.A. 21-6815(d)(1) – (4) for what may be used to support a court’s approval or denial of a petition for expungement. It lists the following:

- Evidence received during the proceeding;
- Written briefs;
- Oral arguments; and,
- Any other evidence deemed trustworthy and reliable by the court.

For the six reasons above, I ask the Committee to and the House to deny HB 2226 and not allow it to become law. I stand available for questions.

Sincerely,

/s/ Britain D. Stites

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