



February 4, 2022  
House Committee on Judiciary  
Kansas State Capitol  
300 SW 10<sup>th</sup> Street  
Topeka, KS 66612

Re: HB 2557: Prohibiting the denial of a petition for expungement of a juvenile offense due to the petitioner's inability to pay outstanding costs fees, fines or restitution and authorizing expungement if the juvenile has not committed an offense in the previous two years.

Chair Patton and Members of the Committee,

I am writing on behalf of The Gault Center (formerly the National Juvenile Defender Center),<sup>1</sup> in support of HB 2557. The Gault Center is a non-profit, non-partisan organization dedicated to promoting justice for all children by ensuring excellence in youth defense.<sup>2</sup> Through our work on issues related to youth defense, we engage with defenders, advocates, judges, legal system decision makers, and medical professionals across the country to educate stakeholders on the importance of upholding youth rights and establishing court practices that embody developmental research, racial equity, and current best practices.

### **Importance of Expungement Legislation**

Most youth that have contact with the juvenile court system, have one court contact and then never return. Despite being focused on the improvement of a youth's ability to live more productively and responsibly in the community<sup>3</sup>, contact with the juvenile court system can have lifelong negative impacts. These consequences, commonly referred to as collateral consequences extend well past adjudication, long past successful completion of services and programming, and result in unanticipated barriers to success. These collateral consequences can impact education, housing, employment, and community engagement.<sup>4</sup>

Without access to expungement, juvenile court collateral consequences can impede and potentially foreclose future positive opportunities for youth. We acknowledge and appreciate the progress that HB 2557 provides to Kansas Youth. We support the following provisions of HB 2557:

- (1) Removing the ability of the court to require that all court costs, fees, and restitution be paid prior to expungement.

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<sup>1</sup>On January 1, 2022, the National Juvenile Defender Center became the Gault Center. The organization is now named for the United States Supreme Court case, *In re Gault*, 387 U.S. 1 (1967), that affirmed young people's right to counsel and right to due process in court.

<sup>2</sup>NAT'L JUV. DEF. CTR., <https://njdc.info> (last visited Feb. 6, 2022).

<sup>3</sup> Kan. Stat. Ann. § 38-2301.

<sup>4</sup>NAT'L JUV. DEF. CTR., *Have a Juvenile Record in Kansas?* (2021), <https://njdc.info/wp-content/uploads/Kansas-Collateral-Consequences.pdf>.

- (2) Amending the period of consideration for prior offenses from “since the final discharge of the juvenile” to “in the past two years” for conviction of a felony.
- (3) Removing misdemeanors and traffic offense convictions and adjudications as a bar to expungement.

However, we urge this committee to consider the following amendments to strengthen this bill:

- (1) Elimination of the \$176 docket fee.
- (2) Deletion of the consideration of (c)“the circumstances and behavior of the petitioner warrant expungement” as it is vague and susceptible to bias and arbitrariness.
- (3) Deletion of petitioner’s “unwillingness” to pay as a factor in consideration of expungement as it is vague and susceptible to bias and arbitrariness.
- (4) Provide counsel to youth post-disposition for issues including expungement.

### **Importance of Access to Counsel Post Disposition in Youth Court**

Youth are entitled to “the guiding hand of counsel at every step in the proceedings against [them].”<sup>5</sup> Without an attorney, young people must advocate for themselves in a complex legal landscape. A knowledgeable attorney could help young people navigate the process of gathering records and understanding expungement factors, eligibility, requirements, and exceptions. More importantly, to the extent that discretionary factors remain in the proposed legislation, an attorney can present information and demonstrate why the petition should be granted. HB 2557 offers a second chance for a narrow group of individuals who have distanced themselves from their youthful indiscretions. Under the current expungement provisions, various stakeholders have seen few, if any, requests for expungement in their career.<sup>6</sup> The process can be daunting for anyone, meaning that young people seeking gainful opportunities may face insurmountable barriers because they are precluded from expungement.

HB 2557 is an important step to ensuring that more Kansas Youth are eligible for a second chance at avoiding lifelong consequences for youthful actions.

We urge the committee to pass HB 2557 with adoption of the above referenced amendments.

Sincerely,

*Kristina Kersey*

Kristina Kersey

Senior Youth Defense Counsel

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<sup>5</sup> In re Gault, 387 U.S. 1, 36 (1967) (quoting Powell v. Alabama, 287 U. S. 45, 69 (1932)).

<sup>6</sup> NAT’L JUV. DEF. CTR., LIMITED JUSTICE: AN ASSESSMENT OF ACCESS TO AND QUALITY OF JUVENILE DEFENSE COUNSEL IN KANSAS (2020), <https://njdc.info/wp-content/uploads/Kansas-Assessment-Web.pdf>.