

Testimony in Support of House Bill 2575
House Judiciary Committee
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Kansas Legal Services has worked on behalf of our low income clients to reduce the burdens that being poor has placed on their lives. One significant burden is having a criminal record. This limits employment and housing opportunities. Even public housing is barred to those with criminal convictions, despite the length of time that has transpired since completion of the sentence. Employers often ask about criminal convictions and bar hiring anyone with a record, without regard to the seriousness of the crime or the time that has passed since the conviction.

This bill is about creating a way for persons who are charged, but not convicted of a crime, the opportunity to have those records sealed from public view. This is a very modest bill. It creates the opportunity for those who are charged with a crime, but had the case disposed of by a finding of not guilty or a decision by the prosecutor to dismiss all charges. This bill will seal those records from public view. It is unclear, currently, how people get those records sealed, since the law doesn't set at which those people are eligible for expungement.

Two mechanisms in this bill accomplish this goal. Prospectively, it anticipates a process where language sealing the record from public view is included in orders of dismissal or journal entries that find a person not guilty. Barring that, a separate form could be created in the Court's Odyssey system that would create the needed final order and allow the Judge to sign it.

Retrospectively, it sets up a paper based expungement process for people to use that is similar to the current system, but sets a trigger point of 60 days after the finding of acquittal or dismissal of all charges. This allows time for appeal, if that come into play.

This law would cover diversion agreements entered into with prosecutors. However, DUI diversion agreements would be exempted. Those have their own separate 5 year time limit, which would remain, even if diverted. (a)(3)

The system also employs aspects of the Court's notification process that are tied to Odyssey (E-Flex) that notifies attorneys involved in a case about new documents filed. This eliminates a step through which a defendant must notify the Prosecutor, which duplicates the notice given in the electronic system. Since these aren't new cases, the attorneys involved are in the system and get notice that way. Notice to law enforcement remains an aspect of the process, but the Prosecutor carries out that notice. (b)(1)

The law also sets up what could be seen as a process where a presumption in favor of expungement exists, unless the Prosecutor objects. The Prosecutor has 30 days to object and have the matter set for a hearing. Otherwise, the order of expungement is granted. (b)(2)

After expungement, the limitations of disclosure remain identical to present law, with one exception. The language allows a Prosecutor to look at court held information for a broader reason that exists in other expungement statutes. The purpose of this difference is out of a concern for a Prosecutor who might dismiss a charge, which a newly elected Prosecutor might wish to bring again. The change in disclosure would allow any Prosecutor to look at court records for the purpose of potential prosecution. (f)(6)

This bill does not apply to municipal courts, although they could adopt it, if they choose.

In 2021, Kansas Legal Services provided legal services to 831 Kansans in need of assistance with an expungement. We had 1,025 requests for legal help of this type. We had 14,420 people look at the expungement page on our website (www.kansaslegalservices.org). Forms we make available for self-represented persons were used by 1,244 people. Community events in Salina, Pratt, Wyandotte County, Hays, Hutchinson, Johnson County and Southeast Kansas have either occurred or are planned in 2021 and 2022.

Another barrier surrounding expungement is the unanswered question of whether all fines and fees must be paid before the person is eligible for expungement. Judges are not all in agreement on this. House Bill 2556 allows a Judge to expunge a conviction without full payment of fines and fees. This makes sense. Keeping a barrier to employment in place, while requiring people to pay money before the barrier is removed is the classic Catch 22. We speak to many low income people each year who are barred from expungement because they can't fully pay the fines and fees, yet they are barred from better employment by their convictions. An expungement could get them in a position of paying the fines and fees, which don't go away if the expungement is granted.

The committee might be interested to know that Kansas is involved as the field site for some research being conducted by the Access to Justice Labs at Harvard Law School. This research is looking at the outcome of expungement cases filed by lawyers or by the defendant as a self-represented person. In addition, each person who has an expunged record is being followed for up to three years, to look at the outcome of the expungement on their earnings, housing stability and further contact with law enforcement. The initial part of the study will end in December, 2021, with follow-up continuing beyond that point. Kansas Legal Services is the partner with Harvard Law School doing the legal work in Kansas for this study.

Kansas Legal Services (KLS), a statewide non-profit corporation, is devoted to helping low income Kansans meet their basic needs through the provision of important legal and mediation services. KLS is legal aid in Kansas, providing equal access to justice for the most vulnerable Kansans. KLS served more than 18,500 persons in all 105 counties last year through eleven legal services offices and two mediation offices across the state.