



State of Kansas

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House Judiciary

Neutral Testimony

HB 2575 – Requiring certain records to be
automatically expunged from a person’s criminal record

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Chairman Patton and members of the committee, thank you for the opportunity to appear today to testify concerning HB 2575. The bill would require certain records to be automatically expunged from a person’s criminal record and directs this process, starting at the district court level, and implements procedures at the appellate court level.

The judicial branch does not take a position on the policy aspects of this bill but would ask the committee to consider two potential amendments to the bill. The first proposed change is on page 2, line 19. We discussed this bill with our appellate clerks, and they requested clarifying the language on the requirement that the Kansas Bureau of Investigation (KBI) “shall notify” regarding the expungement. We request striking “notify” and adding language directing the KBI send a copy of the order to the stated groups. We add this language not to add a requirement to KBI practice and procedure, but to illustrate the procedure already occurring. The clerk of the appellate courts reports that the KBI already provides a copy of the order of expungement so we offer this amendment to memorialize the current practice. Also, our clerks would feel more comfortable continuing to receive a copy of the expungement order itself.

The second proposed change is on page 4, line 2 (subsection d). This section would require the appellate court to seal its case file and also direct that the version of the appellate opinion on the court’s website be modified to avoid use of the defendant’s name in the case title and the body of the opinion. We ask the committee to consider striking this subsection. We understand the purpose of this section is to ensure that after an individual has received an expungement of an acquittal or dismissal, their name will not be associated with an opinion that is connected to this now expunged criminal case. However, it is likely that this case opinion, by

the time an expungement has been issued, has already been collected by legal search tools, including Westlaw, LexisNexis, and free online legal websites like Cornell that collect all appellate opinion cases. While we understand the intention behind this proposal, we believe that subsection (d) does not accomplish the intended purpose and potentially causes confusion by creating two competing opinions available on the internet.

I have attached our two proposals to the testimony. Thank you for your time. I am happy to stand for questions regarding the bill.

HOUSE BILL No. 2575

By Committee on Judiciary

1-31

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to sentencing; requiring automatic expungement of certain records;
3 amending K.S.A. 2021 Supp. 21-6614 and repealing the existing
4 section.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. (a) (1) On and after July 1, 2022, notwithstanding the
8 provisions of K.S.A. 2021 Supp. 21-6614, and amendments thereto, and
9 except as provided in paragraph (3) and subsection (c)(3), if a court enters
10 an order of acquittal of criminal charges against a person or enters an order
11 dismissing, with or without prejudice, all criminal charges in a case against
12 a person, the court shall order the record of such charges and related arrest
13 records expunged 30 days after such order is entered unless the person
14 objects to the expungement or an appeal is filed. If an appeal is filed and
15 the appellate court issues a mandate affirming the district court's dismissal,
16 the district court shall order the records expunged 30 days after such
17 mandate is filed. An order expunging records pursuant to this paragraph
18 shall not require any action by the person.

19 (2) (A) Notwithstanding the provisions of K.S.A. 2021 Supp. 21-
20 6614, and amendments thereto, and except as provided in paragraph (3), a
21 person who has been charged with a criminal offense and who has been
22 acquitted of such charges or against whom charges have been dismissed,
23 and whose records have not been expunged pursuant to paragraph (1), may
24 petition the court in which the disposition of charges was made to expunge
25 all charges and related arrest records. A petition for expungement brought
26 under this paragraph shall be filed not sooner than 60 days after the order
27 of acquittal or dismissal, with or without prejudice, is entered by the court.

28 (3) The provisions of paragraphs (1) and (2) do not apply to diversion
29 agreements entered into in lieu of further criminal proceedings for a
30 violation of driving under the influence, K.S.A. 8-1567, and amendments
31 thereto, or to violations of a city ordinance or county resolution prohibiting
32 the acts prohibited by K.S.A. 8-1567, and amendments thereto.

33 (b) (1) After the filing of a petition pursuant to subsection (a)(2), the
34 court shall notify the prosecutor and provide such prosecutor with the
35 opportunity to respond to the petition. Such response shall be filed within
36 30 days after the filing of the petition. The prosecutor shall notify the

1 arresting law enforcement agency of such petition.

2 (2) (A) If a response objecting to the expungement is filed, the court
3 shall set the matter for hearing. The prosecutor shall notify any victim of
4 such hearing as required by K.S.A. 74-7335, and amendments thereto.

5 (B) If a response objecting to the expungement is not filed, the court
6 shall order the expungement of such records 30 days after the filing of the
7 petition pursuant to subparagraph (C).

8 (C) If the court finds that a petition filed pursuant to subsection (a)(2)
9 is properly filed, the court shall grant the petition and order the court
10 records and related arrest records expunged if such order is consistent with
11 the public welfare.

12 (c) (1) An order of expungement pursuant to this section shall
13 expunge all criminal records in the custody of the court and any criminal
14 records in the custody of any other agency or official, including law
15 enforcement records, related to the charges described in such order.

16 (2) When a court has issued an order of expungement pursuant to this
17 section, the clerk of the court shall send a certified copy of the order of
18 expungement to the Kansas bureau of investigation. The Kansas bureau of
19 investigation shall ~~notify~~ the federal bureau of investigation, the secretary
20 of corrections, the appellate courts and any other criminal justice agency
21 that may have a record of the arrest, charge, conviction, acquittal,
22 dismissal or diversion. If the case was appealed from municipal court, the
23 clerk of the district court shall send a certified copy of the order of
24 expungement to the municipal court. The municipal court shall order the
25 case expunged once the certified copy of the order of expungement is
26 received. After the order of expungement is entered, the petitioner shall be
27 treated as not having been arrested, charged, acquitted, dismissed or
28 diverted of the crime, except that:

29 (A) Upon conviction for any subsequent crime, the diversion that was
30 expunged may be considered as a prior conviction in determining the
31 sentence to be imposed;

32 (B) the petitioner shall disclose that the arrest, acquittal, dismissal or
33 diversion occurred if asked about previous arrests, convictions or
34 diversions:

35 (i) In any application for licensure as a private detective, private
36 detective agency, certification as a firearms trainer pursuant to K.S.A. 75-
37 7b21, and amendments thereto, or employment as a detective with a
38 private detective agency, as defined by K.S.A. 75-7b01, and amendments
39 thereto; as security personnel with a private patrol operator, as defined by
40 K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined
41 in K.S.A. 76-12a01, and amendments thereto, of the Kansas department
42 for aging and disability services;

43 (ii) in any application for admission, or for an order of reinstatement,

strike
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the
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1 to the practice of law in this state;

2 (iii) to aid in determining the petitioner's qualifications for
3 employment with the Kansas lottery or for work in sensitive areas within
4 the Kansas lottery as deemed appropriate by the executive director of the
5 Kansas lottery;

6 (iv) to aid in determining the petitioner's qualifications for executive
7 director of the Kansas racing and gaming commission, for employment
8 with the commission or for work in sensitive areas in parimutuel racing as
9 deemed appropriate by the executive director of the commission, or to aid
10 in determining qualifications for licensure or renewal of licensure by the
11 commission;

12 (v) to aid in determining the petitioner's qualifications for the
13 following under the Kansas expanded lottery act:

14 (a) Lottery gaming facility manager or prospective manager,
15 racetrack gaming facility manager or prospective manager, licensee or
16 certificate holder; or

17 (b) an officer, director, employee, owner, agent or contractor thereof;

18 (vi) upon application for a commercial driver's license under K.S.A.
19 8-2,125 through 8-2,142, and amendments thereto;

20 (vii) to aid in determining the petitioner's qualifications to be an
21 employee of the state gaming agency;

22 (viii) to aid in determining the petitioner's qualifications to be an
23 employee of a tribal gaming commission or to hold a license issued
24 pursuant to a tribal-state gaming compact;

25 (ix) in any application for registration as a broker-dealer, agent,
26 investment adviser or investment adviser representative, all as defined in
27 K.S.A. 17-12a102, and amendments thereto;

28 (x) in any application for employment as a law enforcement officer as
29 defined in K.S.A. 22-2202 or 74-5602, and amendments thereto; or

30 (xi) to aid in determining the petitioner's qualifications for a license to
31 act as a bail enforcement agent pursuant to K.S.A. 75-7e01 through 75-
32 7e09, and amendments thereto, and K.S.A. 2021 Supp. 50-6,141, and
33 amendments thereto;

34 (C) the court, in the order of expungement, may specify other
35 circumstances under which the conviction is to be disclosed;

36 (D) the diversion may be disclosed in a subsequent prosecution for an
37 offense that requires as an element of such offense a prior conviction of
38 the type expunged; and

39 (E) upon commitment to the custody of the secretary of corrections,
40 any previously expunged record in the possession of the secretary of
41 corrections may be reinstated and the expungement disregarded, and the
42 record continued for the purpose of the new commitment.

43 (3) Upon a motion establishing good cause, the court may set aside

Strike (d)

1 the order expunging a record pursuant to this section.

2 ~~→ (d) If an expungement is ordered under subsection (a)(1) or (a)(2),~~
3 ~~any appellate court that issued an opinion in the case shall order the~~
4 ~~appellate case file to be sealed and also direct that the version of the~~
5 ~~appellate opinion on the court's website be modified to avoid use of the~~
6 ~~defendant's name in the case title and the body of the opinion.~~

7 (e) (1) Subject to the disclosures required pursuant to subsection (c),
8 in any application for employment, license or other civil right or privilege,
9 or any appearance as a witness, a person whose records of arrest, acquittal,
10 dismissal or diversion related to a criminal charge have been expunged
11 under this statute may state that such person has never been arrested,
12 charged, acquitted, dismissed or diverted of the crime.

13 (2) A person whose arrest record, conviction or diversion of a crime
14 that resulted in such person being prohibited by state or federal law from
15 possessing a firearm has been expunged under this statute shall be deemed
16 to have had such person's right to keep and bear arms fully restored. This
17 restoration of rights shall include, but not be limited to, the right to use,
18 transport, receive, purchase, transfer and possess firearms. The provisions
19 of this paragraph shall apply to all orders of expungement pursuant to this
20 section.

21 (f) Whenever the records of arrest, acquittal, dismissal, conviction or
22 diversion related to a criminal charge have been expunged under the
23 provisions of this section or under the provisions of any other existing or
24 former statute, the custodian of the records of arrest, acquittal, dismissal,
25 conviction, diversion or incarceration relating to such criminal charge shall
26 not disclose the existence of such records, except when requested by:

27 (1) The person whose record was expunged;

28 (2) a private detective agency or a private patrol operator, and the
29 request is accompanied by a statement that the request is being made in
30 conjunction with an application for employment with such agency or
31 operator by the person whose record has been expunged;

32 (3) a court, upon a showing of a subsequent conviction of the person
33 whose record has been expunged;

34 (4) the secretary for aging and disability services, or a designee of the
35 secretary, for the purpose of obtaining information relating to employment
36 in an institution, as defined in K.S.A. 76-12a01, and amendments thereto,
37 of the Kansas department for aging and disability services of any person
38 whose record has been expunged;

39 (5) a person entitled to such information pursuant to the terms of the
40 expungement order;

41 (6) a prosecutor, for the purpose of a potential prosecution;

42 (7) the supreme court, the clerk or disciplinary administrator thereof,
43 the state board for admission of attorneys or the state board for discipline