

January 24, 2023

The Honorable Fred Patton, Chairperson  
House Committee on Judiciary  
300 SW 10th Avenue, Room 582-N  
Topeka, Kansas 66612

Dear Representative Patton:

**SUBJECT:** Fiscal Note for HB 2028 by House Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2028 is respectfully submitted to your committee.

HB 2028 would specify that on and after July 1, 2023, a court would be required to order expungement of records of charges and arrests when either the court enters an order of acquittal of criminal charges or when the court enters an order dismissing all criminal charges against a defendant with or without prejudice. The expungement order must be entered 30 days after the order of acquittal or dismissal, unless the defendant objects to the expungement or an appeal is filed, or the prosecutor files a written objection to the expungement. If the appeal results in the appellate court issuing a mandate affirming the district court's dismissal, the district court must order expungement of the records 30 days after the mandate is filed. If the prosecutor files a written objection to the expungement, the court would be required to promptly hold a hearing on the objection. If the court finds expungement appropriate, the court would order the records expunged 30 days after the hearing. If the court finds expungement is not appropriate, the court would not order the records expunged.

The bill would specify that if the court has not initiated the expungement process outlined in the previous paragraph, the defendant who was acquitted or whose charges were dismissed and whose records have not been expunged, may petition for expungement 60 days after the order of acquittal or dismissal. The expungement provisions would not apply to driving under the influence diversions. When a defendant initiates an expungement petition and when the petition is filed, the court would be required to notify the prosecutor who would have 30 days to respond. The prosecutor would be required to inform the arresting law enforcement agency of the expungement petition.

If the prosecutor files a response, the court would be required to set a hearing and the prosecutor would notify the victim(s). However, if the prosecutor does not file a response, the court would be required to order an expungement 30 days after the petition is filed. If the court finds the petition was properly filed, the court would be required to grant the petition and the court and arrest records would be expunged.

When a court has issued an order of expungement, the clerk of the court would be required to send a copy of the order of expungement to the Kansas Bureau of Investigation (KBI). The KBI would be required to notify the Federal Bureau of Investigation, the Secretary of Corrections, the appellate courts, and any other criminal justice agency that may have a record of the case. If the case was appealed from a municipal court, the clerk of the district court would be required to send a copy of the expungement order to the municipal court for the case to be expunged.

Once an expungement order is filed, the person would be treated as if never arrested, charged, acquitted, dismissed, or diverted, except in the following cases:

1. If the person is convicted for any subsequent crimes, the expunged diversion may be considered a prior conviction for sentencing purposes;
2. The person would be required to disclose the expunged case if asked about prior convictions when applying for certain licensures; in an application for admission or for the reinstatement of a law license; or applying for a job with the Kansas Lottery, the Kansas Racing and Gaming Commission, law enforcement, a broker dealer, or bail enforcement;
3. If a court orders a person to disclose in certain situations;
4. A diversion may be disclosed in subsequent prosecution for an offense that requires an element of the prior crime charged; and
5. Upon commitment to the custody of the Secretary of Corrections.

After an expungement, a person could say they have never been arrested, charged, acquitted, had charges dismissed, or been on diversion. HB 2028 would also allow a person whose record has been expunged to have their rights to keep and bear arms fully restored. Custodians of records of arrest, acquittal, dismissal, conviction, diversion, or incarceration related to the expungement charges would be required to not disclose the records, with some exceptions as outlined in the bill. The bill also specifies that “criminal charges” would not include a traffic infraction that is not classified as a misdemeanor.

Estimated State Fiscal Effect				
	FY 2023 SGF	FY 2023 All Funds	FY 2024 SGF	FY 2024 All Funds
Revenue	--	--	--	--
Expenditure	--	--	\$56,326	\$56,326
FTE Pos.	--	--	--	1.00

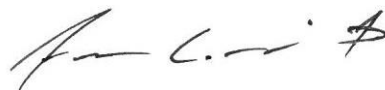
The Kansas Bureau of Investigation states enactment of HB 2028 would result in additional expenditures of \$56,326 from the State General Fund in FY 2024. Of that amount, \$52,326 would be to hire an additional FTE position to process additional expungements and the remaining \$4,000 would be for one-time costs to purchase computer equipment and software.

The Office of Judicial Administration states enactment of HB 2028 would allow petitions to be filed with the district courts and require court hearings for those cases, which could result in more time spent by court employees and judges processing and deciding these cases. The Office indicates most of the district court clerk's duties required in the bill's provisions are already performed under current law; however, the Office estimates that the volume of work would increase under the bill. In addition, courts would have to track cases in which charges are dismissed or the defendant is acquitted and to accomplish this, court clerks would have to perform this procedure manually or the centralized case management system would need to be reprogrammed, which would result in additional expenditures, according to the Office.

The Office estimates enactment of the bill could result in the collection of docket fees in those petitions filed under the bill's provisions, which would be credited to the State General Fund. According to the Office, a fiscal effect cannot be estimated. Any fiscal effect associated with HB 2028 is not reflected in *The FY 2024 Governor's Budget Report*.

The Kansas Association of Counties states enactment of the bill would eliminate the need for documents to be filed and for court proceedings to take place for these expungements, which the Association estimates could save court docket time and costs for Kansas counties.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Proffitt", followed by a stylized flourish or symbol.

Adam Proffitt  
Director of the Budget

cc: Vicki Jacobsen, Judiciary  
Jay Hall, Kansas Association of Counties  
Paul Weisgerber, Kansas Bureau of Investigation