

SESSION OF 2023

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2028

As Amended by House Committee on Judiciary

Brief*

HB 2028, as amended, would create and amend law regarding expungement, including providing for automatic expungement of criminal charges and arrest records in certain circumstances.

The bill would require, on and after July 1, 2024, if a court enters an order of acquittal of criminal charges against a person or enters an order dismissing, with or without prejudice, all criminal charges in a case against a person, the court to order the record of such charges and related arrest records expunged 30 days after such order is entered, unless:

- The person objects to the expungement;
- An appeal is filed; or
- The prosecutor files a written objection to the expungement.

If an appeal is filed and results in a mandate affirming the district court's dismissal, the district court would be required to order the records expunged 30 days after the mandate is filed.

If the prosecutor files a written objection to the expungement, the bill would require the court to promptly hold a hearing on such objection. If the court finds expungement is appropriate, the court would be required to order the records

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

expunged 30 days after such hearing. If the court finds expungement is not appropriate, the bill would prohibit the court from ordering the records expunged.

The bill would specify that an order expunging records under the above provisions would not require any action by the person.

The bill would provide that a person, who has been charged with a criminal offense and who has been acquitted of such charges or against whom charges have been dismissed, whose records have not been expunged under the above provisions, may petition the court in which the disposition of charges was made to expunge all charges and related arrest records. The bill would require such petition to be filed not sooner than 60 days after the order of acquittal or dismissal is entered by the court. After the filing of such petition, the court would be required to notify the prosecutor, who would have the opportunity to respond within 30 days after the filing of the petition. The prosecutor would be required to notify the arresting law enforcement agency of the petition. If a response objecting to the expungement is filed, the court would be required to set the matter for hearing, and the prosecutor would be required to notify any victim of the hearing. If a response objecting to the expungement is not filed, the court would be required to order expungement of the records 30 days after the filing of the petition. If the court finds that a petition is properly filed, the court would be required to grant the petition and order the court records and related arrest records expunged if such order is consistent with the public welfare.

The bill would provide that expungement procedures established by the bill would not apply to diversions for a violation of driving under the influence under state law.

The bill would provide that an order of expungement under its provisions would expunge all criminal records in the custody of the court and any criminal records in the custody of any other agency or official, including law enforcement

records, related to the charges described in such order. The bill would specify procedures by which various agencies and entities who might have related records would be notified of the expungement.

The bill would provide that, after the order of expungement is entered, the petitioner would be treated as not having been arrested, charged, acquitted, dismissed, or diverted of the crime, except that upon conviction for any subsequent crime, the diversion that was expunged may be considered as a prior conviction in determining the sentence to be imposed, and the petitioner would be required to disclose that the arrest, acquittal, dismissal, or diversion occurred if asked about previous arrests, convictions, or diversions in certain applications for licensure, registration, or employment as specified in the bill.

The bill would also permit the court, in the order of expungement, to specify other circumstances under which the conviction is to be disclosed. The diversion could be disclosed in a subsequent prosecution for an offense that requires as an element of such offense a prior conviction of the type expunged. Upon commitment to the custody of the Secretary of Corrections, any previously expunged record in the possession of the Secretary could be reinstated and the expungement disregarded, and the records continued for the purposes of the new commitment.

Upon a motion establishing good cause, the court could set aside the expungement order under the bill's provisions.

Subject to the disclosures required by the bill, in any application for employment, license, or other civil right or privilege, or any appearance as a witness, a person whose records have been expunged under the bill's provisions may state that such person has never been arrested, charged, acquitted, dismissed, or diverted of the crime.

The bill would outline the full restoration of a person's right to keep and bear arms if disqualifying records are expunged under the bill's provisions.

Whenever the records of arrest, acquittal, dismissal, conviction, or diversion related to a criminal charge have been expunged under the bill's provisions or under the provisions of any other existing or former statute, the bill would prohibit the custodian of such records from disclosing the existence of such records, except when requested by:

- The person whose record was expunged;
- Entities or persons in connection with an application for certain licensure, registration, certification, or employment, as specified by the bill;
- A court, upon a showing of a subsequent conviction of the person whose record has been expunged;
- A person entitled to such information pursuant to the terms of the expungement order;
- A prosecutor, for the purpose of a potential prosecution;
- The Kansas Sentencing Commission;
- A law enforcement agency, for the purposes of a criminal investigation;
- The Attorney General, for any other purpose authorized by law, except an expungement record could not be the basis for denial of a license to carry a concealed handgun; or
- The Kansas Bureau of Investigation (KBI), for the purpose of completing a person's criminal history record information within the central repository.

The bill would state that, for purposes of the bill's provisions, the term "criminal charges" would not include a traffic infraction not classified as a misdemeanor.

The bill would state that the new section created by the bill, except for the automatic expungement procedure, would be construed and applied retroactively.

The bill would amend the existing Kansas Criminal Code statute governing expungement to remove provisions regarding diversion, which would be replaced by the new procedures created by the bill.

Background

The bill was introduced by the House Committee on Judiciary at the request of Representative Curtis.

[*Note:* A substantially similar bill, 2022 HB 2575, was passed by the House Committee on Judiciary in the 2022 Legislative Session, but was stricken from the House Calendar.]

House Committee on Judiciary

In the House Committee hearing on January 25, 2023, the Wyandotte County District Attorney, Executive Director of the Kansas African American Affairs Commission, one private citizen, and representatives of the Greater Kansas City Chamber of Commerce, Kansas County and District Attorneys Association, Kansas Public Health Department, State Board of Indigents' Defense Services, Stewart Law Office, and the Unified Government of Wyandotte County/Kansas City testified as **proponents** of the bill, stating it would help reduce barriers to expungement, which would help individuals in endeavors such as acquiring housing and employment and productively participating in society. The Mayor of the City of Leavenworth and a

representative of the American Civil Liberties Union – Kansas provided written-only proponent testimony.

A representative of the Judicial Branch presented neutral testimony requesting an amendment to extend the bill's implementation date.

Representatives of the Kansas Judicial Council and the League of Kansas Municipalities provided written-only neutral testimony.

The House Committee amended the bill to extend its implementation date by one year and to remove references to violations of city ordinances and county resolutions for driving under the influence in the section describing exceptions to the use of automatic expungement pursuant to the bill.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, KBI indicates enactment of the bill would result in additional expenditures of \$56,326 from the State General Fund (SGF) 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 (OJA) states enactment of the bill 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 those cases. OJA indicates most of the district court clerk's duties required in the bill's provisions are already performed under current law; however, OJA 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.

OJA also 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 SGF. According to OJA, a fiscal effect cannot be estimated. Any fiscal effect associated with enactment of the bill 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.

Expungement; automatic; acquittal; dismissal; criminal charges; arrest records