

To: House Judiciary Committee

From: Amanda L. Stanley, General Counsel

Date: February 8, 2021

RE: HB 2226 Opposition Testimony

We want to thank Chairman Patton and the members of the Committee for affording the League of Kansas Municipalities the opportunity to provide testimony in opposition to HB 2226.

While HB 2226 purports to create automatic expungements after three years for the conviction and related arrest records of violations of city ordinances and various convictions at the district court level, the process created in HB 2226 is anything but automatic. It shifts all responsibility and expense for the filing of petitions of expungement to the city and county, resulting in a massive unfunded mandate.

As written, the bill requires the court, likely once a week, to compile a list of all convictions that happened three years ago. The prosecutor would have to prepare a detailed petition for each case. The petition would have to be submitted to the judge and then recorded in each case. Court staff will then have to figure out how to undo the State's records on moving violations or anything else reported to the State, all with no cost to the defendant. This will be a tremendous burden on large and small municipal courts. For example, in one small city the municipal court meets daily but only for two hours utilizing a part time municipal prosecutor and judge. The city estimated that the expungements alone would consume all their time and no current cases could be processed or heard without additional funding from the taxpayers. In larger jurisdictions such as Junction City, the municipal court processes 6,000 to 8,000 cases a year. Just to perform the requirements of this act would require at least one additional full-time staff member.

Additionally, the bill is retroactive, and as written, would require expungement of records going back to the beginning of the municipal court. One city asked if that meant they would have to go through 71 years of records for expungement.

There are also public safety concerns with this legislation. Criminal histories are an important component of expungements that would not be reviewed. There is no mechanism in the legislation for a prosecutor to object to the expungement based on the defendant's subsequent behavior. The defendant could engage in a consistent pattern of criminality and the court would be unable to reject an expungement petition. While some of the offenses being expunged are routine traffic violations, and while we question if it is really a good

use of a prosecutor's time to file a petition for every seatbelt or defective tag-light ticket, this bill also includes automatic expungement for serious offenses. Some of those include battery, domestic battery, battery against a law enforcement officer, sexual battery, battery against a school employee, assault, unlawful interference with (each of the following is a separate offense) emergency medical services attendant, firefighter, the custody of a committed person, unlawful restraint, violation of protection from abuse order, violation of a protective order, unlawful administration of a substance, stalking, breach of privacy, lewd, lascivious behavior, selling sexual relations, buying sexual relations, unlawful possession of a visual depiction of a child, unlawful transmission of the same, furnishing alcohol to minors, endangering a child, theft, criminal damage to property, criminal trespass, counterfeiting, commercial fossil hunting, interference with law enforcement, interference with judicial process, intimidation of a witness or victim, unlawful possession of marijuana, unlawful distribution of controlled substances, unlawful possession of the same, and tattooing people under 18.. The bill appears to directly violate the Kansas Victim's Rights Act by providing no mechanism of notice to the victims of these offenses. The victims also have no opportunity to protest the expungement.

Finally, this bill also places the requirement to file expungement petitions on the county or district attorney in the convicting courts. Our county and district attorneys are currently struggling to get through the backlog of cases that have accumulated during the COVID-19 pandemic. Now is perhaps not the best time to saddle them with additional responsibilities and unfunded mandates.

While making the process of obtaining an expungement easier is a noble and well-intentioned goal, this legislation is not the way to accomplish it. If the legislature would like to make expungements easier, there are other ways such as creating user-friendly forms so that defendants would not need the assistance of counsel to get an expungement or waiving filing fee requirements. Cities routinely participate in expungement clinics in coordination with Kansas Legal Services to help those defendants taking the initiative to seek an expungement. We would suggest that the issue of expungements needs far more extensive research and input from all sizes of municipalities from all corners of our state. City prosecutors and municipal court judges are happy to engage in that careful review and dialogue; however, any potential benefits of this current piece of legislation are greatly outweighed by the challenges it will create. We would ask that this Committee not recommend this bill favorably for passage.