

KANSAS LEGAL SERVICES

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Testimony in Support of House Bill 2226
House Judiciary Committee
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Kansas Legal Services, Inc.

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 of anyone with a record, without regard to the seriousness of the crime or the time that has passed since the conviction.

Kansas has had, since 1978, a consolidated statutory process for the clearing of criminal convictions. Many crimes can be expunged (sealed from all public and most government access) either 3 or 5 years after the completion of a sentence. Two criteria exist for eligibility: that the person have no felony convictions in the past two years and no additional criminal charges are pending or anticipated. The Judge must also find that the expungement is in the public interest. The expungement process for state charges is laid out in K.S.A. 21-6614 et seq. It involves filing a Petition and payment of a \$197 filing fee. Notice is provided to the prosecutor and arresting agency. The Court may require a hearing before making a decision on the expungement request.

One barrier to obtaining an expungement is the difficulty involved in filing all the paperwork, whether it is done by a self-represented litigant or finding an attorney for representation.

In 2020, I represented a gentleman who had a very marginal employment history, mostly working odd jobs in his community or for a friend. His employment difficulties were tied to a 2001 felony conviction for cultivation of marijuana. He served prison time for this conviction, but met all terms of the sentence in 2005. He would have been eligible for expungement in 2010, but he wasn't aware of the option. Courts generally tell people about expungement on the day of sentencing. You can imagine that those words didn't register with him, when said shortly after he was told that he would be incarcerated for this drug offense. It was a great day for him when he was finally able to tell employers that he had no criminal conviction.

In 2020, Kansas Legal Services provided legal services to 844 Kansans in need of assistance with an expungement. We had 1,100 requests for legal help of this type. We had 2,387 people look at the expungement page on our website (www.kansaslegalservices.org). Forms we make available for self-represented persons were used by 656 people. Community events in Salina, Pratt, Wyandotte County, Hays, Hutchinson, Johnson County and Southeast Kansas have either occurred or are planned in 2021.



Kansas Legal Services

We are legal aid in Kansas, providing equal access to justice for the most vulnerable Kansans.
kansaslegalservices.org

Still with all that, we have barely touched the surface. In 2015, 35,575 criminal cases were filed in Kansas. I choose that year for comparison, since those people would be eligible for expungement in 2020.

People continue to prepare forms on paper, either through attorneys or by self-representation. We do this despite the advances that technology could bring to allow this process to occur on a more automated basis. Many other states have adopted a form of automatic expungement, maximizing technology and reducing the amount of involvement by people. This is possible in Kansas and would lead to a much higher rate of expungement, handled efficiently by the court system.

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. The Senate is considering SB 105 which is designed to resolve this issue, allowing expungement to proceed 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.

I would point out the payment of a filing fee for expungement of these cases does add needlessly to the burden on the County Attorney. The committee should consider allowing the County Attorney to file these cases without charging a filing fee. The defendant has already paid court costs in the underlying case. Handling these cases in a more efficient manner should reduce most of the burden on the Court Clerk's office, eliminating the need for an additional filing fee.

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 3 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.