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**TO: House Judiciary Committee**

**FROM: Kansas Judicial Council – Ron Wurtz, Retired Federal Public Defender**

**DATE: February 7, 2022**

**RE: Testimony in Support of 2022 H.B. 2557 - Prohibiting Denial of Expungement of a Juvenile Offense Due to the Petitioner's Inability to Pay Outstanding Costs, Fees, Fines, or Restitution & Changing the Prior Criminal History Review**

The Kansas Judicial Council (Council) and its JO/CINC Advisory Committee (Committee) support the passage of 2022 H.B. 2557, prohibiting the denial of expungement of a juvenile adjudication due to the petitioner's inability to pay outstanding costs, fees, fines, or restitution, and changing the prior criminal history review.

With the goal of reducing financial hurdles and increasing access to expungements for indigent offenders, 2022 H.B. 2557 amends the juvenile expungement statute, K.S.A. 2021 Supp. 38-2312 to:

- (1) prohibit courts from denying an expungement of a juvenile adjudication due to a juvenile's inability to pay costs, fees, fines, or restitution;
- (2) require payment of costs, fees, fines, or restitution after expungement unless otherwise ordered by the court;
- (3) remove consideration of adult criminal misdemeanor convictions from the adult criminal history review; and

- (4) limit the review of the juvenile’s juvenile adjudication history and adult criminal felony conviction history to the two years preceding the expungement.

### *Background on Juvenile Adjudication Expungement*

A juvenile offender case is a civil, not criminal, case. The term “juvenile adjudication” is used to describe the *civil* finding by the court in a *juvenile offender case*. The term “conviction” is used to describe a *criminal* finding by the court in an *adult criminal case*. The expungement of a juvenile adjudication is governed by different statutes than expungement of adult criminal convictions. The procedure for an expungement of a juvenile adjudication is set out in K.S.A. 2021 Supp. 38-2312. Not all juvenile adjudications are expungable; however, in general, if an adjudication is expungable, the court shall order the expungement of the record and files if the court finds:

- i. the juvenile has reached 23 years of age or the statutorily prescribed waiting period has elapsed (0, 1, or 2 years);
- ii. the juvenile has not had another juvenile adjudication, been convicted in the adult criminal system of a felony or misdemeanor, excluding traffic offenses, and no such proceedings are pending seeking such a conviction or adjudication; and
- iii. the circumstances and behavior of the petitioner warrant expungement.

See K.S.A. 2021 Supp. 38-2312(e).

### **1. Ruling on Expungement**

At the end of a juvenile offender case, some judges cancel any unpaid costs, fees, fines, or restitution, while in other jurisdictions, outstanding costs, fees, fines, or restitution are sent to the court’s collection agency. Just as 2022 H.B. 2556 would prohibit the denial of an expungement of an adult conviction due to the petitioner’s inability to pay outstanding costs, fees, fines, or restitution, 2022 H.B. 2557 mirrors that concept in the juvenile offender expungement statute. The amendment to K.S.A. 2021 Supp. 38-2312(e)(2), on page 3, would prohibit the denial of the expungement of a juvenile adjudication due to a juvenile’s *inability* to pay outstanding costs, fees, fines, or restitution, while also allowing the court to consider an *unwillingness* to pay as a factor in denying the expungement.

### **2. Payment of Outstanding Debt**

While outstanding costs, fines, fees, and restitution should not be an automatic bar to expungement, the expungement should not alter or remove the petitioner’s responsibility to pay

the outstanding debt. The amendment to K.S.A. 2021 Supp. 38-2312(e)(2), on page 3, also includes a clear statement that the expungement shall not release the juvenile from the obligation to pay the costs, fines, fees, or restitution unless the court otherwise orders that the juvenile is no longer responsible for the outstanding balance.

### **3. Removal of Adult Criminal Misdemeanor Convictions**

K.S.A. 2021 Supp. 38-2312(e)(1)(B) states that the court shall order the expungement if, “since the final discharge of the juvenile, the juvenile has not been convicted of any felony or of a misdemeanor other than a traffic offense or adjudicated as a juvenile offender . . . and no proceedings are pending seeking such a conviction or adjudication[.]” Unlike the required criminal history review adult expungement statutes<sup>1</sup>, the juvenile expungement statute requires the criminal history review to include adjudications or convictions for misdemeanors other than traffic offenses. The requirements for expunging a juvenile adjudication should not be higher than the requirements for expunging an adult conviction; therefore, the amendments to K.S.A. 2021 Supp. 38-2312(e)(1)(B), on page 3, require a review of only felony convictions and adjudications.

### **4. Reduction in Adjudication and Conviction History Timeframe**

K.S.A. 2021 Supp. 38-2312(e)(1)(B) currently states that the court shall order the expungement if the petitioner has not been convicted of any felony, misdemeanor, or juvenile adjudication since the petitioner’s final discharge on the case being expunged. Therefore, if the petitioner is 30 years old at the time of the expungement, the statute would prohibit the expungement if the petitioner had ever been convicted of a misdemeanor or felony as an adult. This is a more burdensome standard than the standard for expunging an adult conviction. The adult conviction expungement statutes only require that the petitioner has not been convicted of a felony in the *two years* preceding the petition for expungement.<sup>2</sup> The requirements for expunging a juvenile adjudication should not be higher than the requirements for expunging an adult conviction. Therefore, the amendments to K.S.A. 2021 Supp. 38-2312(e)(1)(B), on page 3, mirror the adult expungement requirements by requiring that the petitioner has not been convicted of a felony or juvenile adjudication in the two years prior to the expungement.

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<sup>1</sup> See K.S.A. 2020 Supp. 12-4516(h) and 21-6614(h) (the court shall order expungement if the petitioner has not been convicted of a felony in the past two years and no proceeding involving any crime is presently pending or being instituted against the petitioner).

<sup>2</sup> K.S.A. 2020 Supp. 12-4516(h) & 21-6614(h).

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**Rachel Y. Marsh**, Lawrence; CEO, Children's Alliance of Kansas.

**Libby Snider**, Topeka; Attorney, Kansas Department of Corrections.

**Amy Raymond**, Topeka; Chief of Trial Court Services, Office of Judicial Administration, non-voting member.