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TO: House Committee on Corrections and Juvenile Justice

FROM: Kansas Judicial Council – Laura Nordgren, Staff Attorney

DATE: January 31, 2023

Re: Neutral Testimony on 2023 H.B. 2113 – Amendments relating to the expungement of adult convictions and juvenile adjudications – WRITTEN ONLY

Parts of 2023 H.B. 2113 are based on the recommendations of two Judicial Council study reports. The reports from the Criminal Law Advisory Committee (beginning on page 3) and Juvenile Offender/Child in Need of Care Advisory Committee (beginning on page 27) are attached. The Judicial Council takes no position on any part of 2023 H.B. 2113 that is not based on the recommendations contained in these reports.

Adult Convictions

With the goals of reducing financial hurdles and increasing access to expungements for indigent offenders, the Judicial Council's Criminal Law Advisory Committee recommended amendments to the adult conviction expungement statutes to:

- (1) allow the expungement waiting period to begin before the person has completed payment of costs, fees, fines, or restitution;
- (2) prohibit courts from denying an expungement due to the petitioner's inability to pay costs, fees, fines, or restitution;
- (3) require payment of costs, fines, fees, and restitution after expungement; and
- (4) allow certain people to access the expunged case file to facilitate the collection of outstanding costs, fees, fines, and restitution.

Juvenile Adjudications

With the same goals of reducing financial hurdles and increasing access to expungements for indigent offenders, the Judicial Council's Juvenile Offender/Child in Need of Care Advisory Committee recommended amendments to the juvenile adjudication expungement statutes 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.

Legislative History of Recommendations

2021 S.B. 105

The Judicial Council's recommendations regarding adult conviction expungement were first considered by the legislature in 2021 S.B. 105. The Senate Judiciary Committee amended S.B. 105 to fix a record access issue pointed out by the Office of Judicial Administration, and then recommend 2021 S.B. 105 be passed as amended. Subsequently, the bill was not considered by the Senate as a whole before the turnaround deadline and died.

2022 H.B. 2556 & 2557

Last year, the Judicial Council's recommendations regarding both adult conviction expungement and juvenile adjudication expungement were considered by the House Judiciary Committee in 2022 H.B. 2556 and 2022 H.B. 2557. After having hearings on both bills, the House Judiciary Committee combined the bills by adding the contents of 2022 H.B. 2557 into 2022 H.B. 2556. The House Judiciary Committee recommended 2022 H.B. 2556 be passed as amended; however, the bill was never considered by the House as a whole and died.

**REPORT OF THE JUDICIAL COUNCIL
CRIMINAL LAW ADVISORY COMMITTEE ON
EXPUNGEMENT AND UNPAID COSTS, FEES, FINES, AND RESTITUTION
December 11, 2020**

In November 2019, Christine Campbell, Kansas Legal Services' Statewide Pro Bono Director, asked the Judicial Council to evaluate the impact unpaid fines and fees have on expungement and consider whether outstanding costs, fees, fines, or restitution should be a reason to deny expungement. On December 13, 2019, the Judicial Council referred the study to the Criminal Law Advisory Committee (the Committee).

COMMITTEE MEMBERSHIP

The members of the Judicial Council Criminal Law Advisory Committee are:

Victor Braden, Chair, Deputy Attorney General; Topeka

Natalie Chalmers, Assistant Solicitor General; Topeka

Randall Hodgkinson, Kansas Appellate Defender Office & Visiting Assistant Professor of Law at Washburn University School of Law; Topeka

Sal Intagliata, Member at Monnat & Spurrier, Chartered; Wichita

Christopher M. Joseph, Partner at Joseph Hollander & Craft, LLC; Topeka

Ed Klumpp, Chief of Police-Retired, Topeka Police Department; Topeka

Hon. Cheryl A. Rios, District Court Judge in the Third Judicial District; Topeka

Ann Sagan, Assistant Federal Public Defender, Federal Public Defender District of Kansas; Topeka

Ann Swegle, Sedgwick County Deputy District Attorney; Wichita

Kirk Thompson, Director of the Kansas Bureau of Investigation; Topeka

Rep. John Wheeler, Kansas House of Representatives, District 123; Garden City

Ronald Wurtz, Retired Public Defender (Federal and Kansas); Topeka

Prof. Corey Rayburn Yung, KU School of Law Professor; Lawrence

DISCUSSION

Expungement of Adult Convictions

Waiting Period

Kansas statutes authorize the expungement of an adult conviction and related arrest records in K.S.A. 2010 Supp. 12-4516 (municipal court) and K.S.A. 2019 Supp. 21-6614 (district court). Depending on the type of conviction, both statutes require a waiting period. A person may not file a petition for expungement until a certain number of years (1, 3, 5 or 10 years) have passed since the person “satisfied the sentence imposed” or was “discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence.”¹ In practice, the requirement that the person “satisfied the sentence imposed” is commonly interpreted to include the satisfaction of all fines, fees, court costs, and restitution. The Committee acknowledged that fines and restitution orders are, by definition, part of a person’s sentence.² However, the Committee agreed this can be problematic within the limited context of expungements.

For example, if a person ordered to serve a period of probation for a misdemeanor battery successfully completes and is released from probation, and pays all fines, fees, court costs, and restitution in August 2015, then under K.S.A. 21-6614(a), the person’s waiting period begins in August 2015. The person could petition for expungement of the misdemeanor battery conviction three years later in September 2018. However, if the person is released from probation in August 2015, but does not finish paying off the fines, fees, court costs, and restitution until January 2020, the person did not “satisfy the sentence imposed” until January 2020. If the person’s waiting period does not begin until January 2020, the person cannot file a petition for expungement until February 2023.

The Committee agreed that requiring the payment of all fines, fees, court costs, and restitution before the “waiting period” begins is a heavy burden on indigent offenders. Often, the record of the conviction or diversion prevents the person from obtaining a job that would

¹ The Committee recognized that depending on the case, a person’s failure to pay fines, fees, court costs, or restitution may prevent the person from being discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence. Failure to be discharged would prevent the expungement waiting period from beginning. The terms of probation, community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence are determined based on the individual facts of each case and vary across the state. The Committee decided against recommending any amendments regarding unpaid costs, fines, fees, or restitution in statutes governing probation, community correctional services programs, parole, postrelease supervision, conditional release or a suspended sentence.

² See e.g. K.S.A. 2019 Supp. 8-1567 (statute requires the court to order a monetary fine as part of the sentence for driving under the influence); and see *State v. Hall*, 298 Kan. 978, 983, 319 P.3d 506 (2014) (“Restitution constitutes part of a criminal defendant’s sentence”).

then enable the person to pay off the outstanding debt. The Committee unanimously recommends K.S.A. 2019 Supp. 12-4516 and 21-6614 include a section stating: "For the purposes of this section, the determination of when the person satisfied the sentence imposed excludes the payment of costs, fees, fines and restitution." The Committee's recommended amendments are on pages 14 and 24.

Ruling on Expungement

Once the waiting period has passed, a person may petition the court for expungement. K.S.A. 2019 Supp. 12-4516(h) and 21-6614(h) state that the court shall order the expungement if (1) the petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner; (2) the circumstances and behavior of the petitioner warrant the expungement; and (3) the expungement is consistent with the public welfare. The court has discretion when evaluating whether the person's circumstances and behavior warrant the expungement and whether the expungement is consistent with the public welfare.

The Committee agreed the court should not use outstanding costs, fines, fees, and restitutions as an automatic bar to expungement. Instead, the Committee recommends the statute require the court's evaluation of the petitioner's circumstances and behavior include the petitioner's ability and willingness to pay. The Committee unanimously agreed that (1) expungement should not be denied due to the petitioner's inability to pay costs, fees, fines, or restitution; and (2) an unwillingness to pay may be considered as a factor in denying expungement.

The Committee recommends the following subsection be added to K.S.A. 2019 Supp. 12-4516(h) and 21-6614(h):

"The court shall not deny the petition for expungement due to the petitioner's inability to pay outstanding costs, fees, fines or restitution. The petitioner's unwillingness, rather than inability, to pay such costs, fees, fines or restitution may be considered as a factor in denying the petition for expungement."

The Committee's recommended amendments are on pages 9 and 19.

Payment of Outstanding Debt

While the Committee did not want outstanding costs, fines, fees, and restitution to be an automatic bar to expungement, the Committee agreed that the expungement should not alter or remove the petitioner's responsibility to pay the outstanding debt. The Committee recommends K.S.A. 2019 Supp. 12-4516(i) and 21-6614(i) include a clear statement that an

expungement does not relieve a defendant's responsibility to satisfy any outstanding costs, fees, fines, or restitution. The Committee's recommended amendments are on pages 11 and 21.

Collection of Outstanding Debt

Generally, when a record is expunged, it is sealed and only accessible by a limited number of people in specific circumstances. In order to make sure the expungement does not prevent the future collection of the outstanding costs, fees, fines, or restitution, the Committee recommends K.S.A. 2019 Supp. 12-4516(i) and 21-6614(i) include a subsection allowing limited access to documents and information regarding the outstanding costs, fees, fines, or restitution for the purpose of collecting the debts.

The Committee recommends the subsection authorize access for the petitioner, the clerk of the court, the agent who is hired by the court to provide collection services, anyone to whom the petitioner was ordered to pay restitution in the case, and an attorney authorized to act on behalf of the listed individuals. The Committee also recommends that the list include a provision allowing the court to authorize access to someone not otherwise listed if the court determines that access to the documents or information pertaining to the outstanding costs, fees, fines, or restitution is necessary for the purposes of collecting the outstanding debt.

The Committee's recommended amendments to K.S.A. 2019 Supp. 12-4516 and 21-6614 are on pages 11 and 21.

Expungement of Juvenile Adjudication

The Committee reviewed the process for expunging a juvenile adjudication as provided in K.S.A. 2019 Supp. 38-2312. The Committee recognized the importance of expungement of juvenile adjudications even if there are outstanding costs, fines, fees, or restitution. Because the Committee members do not regularly handle juvenile adjudication expungements, the Committee reached out to Kansas Legal Services, and two members of the Judicial Council's Juvenile Offender/Child In Need of Care Advisory Committee who are familiar with juvenile offender related matters to gather information about juvenile adjudication expungement and the issue of outstanding fines, fees, court costs, or restitution. The feedback indicated that outstanding costs, fines, fees, and restitution can stand in the way of an expungement.

The Committee agreed that it did not have the expertise or necessary familiarity with juvenile offender cases and expungement statutes to make specific statutory recommendations. The Committee strongly recommends the Judicial Council refer this study to the Juvenile Offender/Child In Need of Care Advisory Committee to consider whether outstanding costs, fines, fees, and restitution should be a reason to deny juvenile adjudication expungements.

During the Committee's discussion with Kansas Legal Services, Kansas Legal Services identified an issue with K.S.A. 2019 Supp. 38-2312(e)(1)(B), which sets out the eligibility requirements for a juvenile adjudication expungement. K.S.A. 2019 Supp. 38-2312(e)(1) sets out the requirements for expungement. Subsection (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[.]" The statute considers the petitioner's entire criminal history. Unlike the adult expungement statutes, the juvenile expungement statute does not limit the review of the petitioner's criminal history to the two years preceding the filing of the petition for expungement.

Because the juvenile adjudication expungement statutes require a review of the petitioner's entire criminal history without any limiting timeframe, prior adjudications and convictions create a bigger barrier to expungement of a juvenile adjudication than an adult conviction. Kansas Legal Services recommended a similar two-year lookback timeframe be added to the juvenile expungement statute. If the Judicial Council refers the study of outstanding fines, fees, court costs, and restitution and juvenile adjudication expungement to the Juvenile Offender/Child In Need of Care Advisory Committee, the Committee recommends the Juvenile Offender/Child In Need of Care Advisory Committee also consider this issue.

RECOMMENDATION

The Committee recommends the adult expungement statutes, K.S.A. 2019 Supp. 12-4516 and 21-6614 be amended in the following ways:

(1) to allow the waiting period to begin before the person has completed payment of costs, fees, fines, or restitution;

(2) to prohibit courts from denying an expungement due to the petitioner's inability to pay costs, fees, fines, or restitution;

(3) to require payment of costs, fines, fees, and restitution after expungement; and

(4) to allow certain people to access documents and information regarding the costs, fines, fees, and restitution after the expungement for the purpose of collecting the debt.

The Committee's recommended amendments to K.S.A. 2019 Supp. 12-4516 and 21-6614 begin on page 7.

Due to the Committee's lack of expertise in the area of juvenile offender adjudications and expungements, the Committee recommends the Judicial Council refer the study to the Juvenile Offender/Child In Need of Care Advisory Committee to consider whether outstanding costs, fines, fees, and restitution should be a reason to deny juvenile adjudication expungements.

While the Committee recommends further study of juvenile expungements by the Juvenile Offender/Child In Need of Care Advisory Committee, the Committee recommends its proposed amendments to the adult expungement statutes be considered by the legislature as soon as possible. The Committee recommends the Judicial Council request introduction of the Committee's proposed statutory amendments in the upcoming legislative session rather than waiting for any recommendations regarding juvenile adjudication expungement from the Juvenile Offender/Child In Need of Care Advisory Committee.

MUNICIPAL CONVICTION EXPUNGEMENT

K.S.A. 2019 Supp. 12-4516. Expungement of certain convictions, arrest records and diversion agreements

(a)(1) Except as provided in subsections (b), (c), (d), (e) and (f), any person who has been convicted of a violation of a city ordinance of this state may petition the convicting court for the expungement of such conviction and related arrest records if three or more years have elapsed since the person:

(A) Satisfied the sentence imposed; or

(B) was discharged from probation, parole or a suspended sentence.

(2) Except as provided in subsections (b), (c), (d), (e) and (f), any person who has fulfilled the terms of a diversion agreement based on a violation of a city ordinance of this state may petition the court for the expungement of such diversion agreement and related arrest records if three or more years have elapsed since the terms of the diversion agreement were fulfilled.

(b) Any person convicted of a violation of any ordinance that is prohibited by either K.S.A. 12-16,134(a) or (b), and amendments thereto, and which was adopted prior to July 1, 2014, or who entered into a diversion agreement in lieu of further criminal proceedings for such violation, may petition the convicting court for the expungement of such conviction or diversion agreement and related arrest records.

(c) Any person convicted of the violation of a city ordinance which would also constitute a violation of K.S.A. 21-3512, prior to its repeal, or a violation of K.S.A. 21-6419, and amendments thereto, or who entered into a diversion agreement in lieu of further criminal proceedings for such violation, may petition the convicting court for the expungement of such conviction or diversion agreement and related arrest records if:

(1) One or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, parole, conditional release or a suspended sentence; and

(2) such person can prove they were acting under coercion caused by the act of another. For purposes of this subsection, "coercion" means: Threats of harm or physical restraint against any person; a scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in bodily harm or physical restraint against any person; or the abuse or threatened abuse of the legal process.

(d) No person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, parole, conditional release or a suspended sentence, if such person was convicted of the violation of a city ordinance which would also constitute:

(1) Vehicular homicide, as defined by K.S.A. 21-3405, prior to its repeal, or K.S.A. 21-5406, and amendments thereto;

(2) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto;

(3) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto;

(4) a violation of the provisions of K.S.A. 8-142 *Fifth*, and amendments thereto, relating to fraudulent applications;

(5) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(6) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603, prior to its repeal, or 8-1604, and amendments thereto;

(7) a violation of the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage; or

(8) a violation of K.S.A. 21-3405b, prior to its repeal.

(e)(1) No person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, parole, conditional release or a suspended sentence, if such person was convicted of a first violation of a city ordinance which would also constitute a first violation of K.S.A. 8-1567, and amendments thereto.

(2) No person may petition for expungement until 10 or more years have elapsed since the person satisfied the sentence imposed or was discharged from probation, parole, conditional release or a suspended sentence, if such person was convicted of a second or subsequent violation of a city ordinance which would also constitute a second or subsequent violation of K.S.A. 8-1567, and amendments thereto.

(3) The provisions of this subsection shall apply to all violations committed on or after July 1, 2006.

(f) There shall be no expungement of convictions or diversions for a violation of a city ordinance which would also constitute a violation of K.S.A. 8-2,144, and amendments thereto.

(g)(1) When a petition for expungement is filed, the court shall set a date for a hearing of such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. The petition shall state the:

(A) Defendant's full name;

(B) full name of the defendant at the time of arrest, conviction or diversion, if different than the defendant's current name;

(C) defendant's sex, race and date of birth;

(D) crime for which the defendant was arrested, convicted or diverted;

(E) date of the defendant's arrest, conviction or diversion; and

(F) identity of the convicting court, arresting law enforcement agency or diverting authority.

(2) A municipal court may prescribe a fee to be charged as costs for a person petitioning for an order of expungement pursuant to this section.

(3) Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the prisoner review board.

(h)(1) At the hearing on the petition, the court shall order the petitioner's arrest record, conviction or diversion expunged if the court finds that:

(1A) The petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;

(2B) the circumstances and behavior of the petitioner warrant the expungement; and

(3C) the expungement is consistent with the public welfare.

(2) The court shall not deny the petition for expungement due to the petitioner's inability to pay outstanding costs, fees, fines or restitution. The petitioner's unwillingness, rather than inability, to pay such costs, fees, fines or restitution may be considered as a factor in denying the petition for expungement.

(i) When the court has ordered an arrest record, conviction or diversion expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest, conviction or diversion. If the case was appealed from municipal court, the clerk of the district court shall send a certified copy of the order of expungement to the municipal court. The municipal court shall order the case expunged once the certified copy of the order of expungement is received. After the order of expungement is entered, the petitioner shall be treated as not having been arrested, convicted or diverted of the crime, except that:

(1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

(2) the petitioner shall disclose that the arrest, conviction or diversion occurred if asked about previous arrests, convictions or diversions:

(A) In any application for licensure as a private detective, private detective agency, certification as a firearms trainer pursuant to K.S.A. 75-7b21, and amendments thereto, or employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the Kansas department for aging and disability services;

(B) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(C) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(D) to aid in determining the petitioner's qualifications for executive director of the Kansas racing and gaming commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(E) to aid in determining the petitioner's qualifications for the following under the Kansas expanded lottery act: (i) Lottery gaming facility manager or prospective manager, racetrack gaming facility manager or prospective manager, licensee or certificate holder; or (ii) an officer, director, employee, owner, agent or contractor thereof;

(F) upon application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

(G) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(H) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

(I) in any application for registration as a broker-dealer, agent, investment adviser or investment adviser representative all as defined in K.S.A. 17-12a102, and amendments thereto;

(J) in any application for employment as a law enforcement officer, as defined in K.S.A. 22-2202 or 74-5602, and amendments thereto;

(K) for applications received on and after July 1, 2006, to aid in determining the petitioner's qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act, K.S.A. 75-7c01 et seq., and amendments thereto; or

(L) for applications received on and after July 1, 2016, to aid in determining the petitioner's qualifications for a license to act as a bail enforcement agent pursuant to K.S.A. 75-7e01 through 75-7e09 and K.S.A. 50-6,141, and amendments thereto;

(3) the court, in the order of expungement, may specify other circumstances under which the arrest, conviction or diversion is to be disclosed; ~~and~~

(4) the conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged-; ~~and~~

(5) the petitioner shall continue to be responsible to fully satisfy any outstanding costs, fees, fines and restitution related to the arrest, conviction or diversion. For the purpose of collecting such outstanding costs, fees, fines or restitution, the following persons shall have access to any documents and information regarding the outstanding costs, fees, fines or restitution notwithstanding any expungement:

(A) The clerk of the court;

(B) a contracting agent as defined in K.S.A. 12-4119, and amendments thereto;

(C) the petitioner and the petitioner's attorney;

(D) the beneficiary under an order of restitution as defined in K.S.A. 12-4119, and amendments thereto, and such beneficiary's attorney; or

(E) any other person as authorized by a court order if the court finds it is necessary for the person to have access to the documents and information for the purpose of collecting the outstanding costs, fees, fines or restitution.

(j) Whenever a person is convicted of an ordinance violation, pleads guilty and pays a fine for such a violation, is placed on parole or probation or is granted a suspended sentence for such a violation, the person shall be informed of the ability to expunge the arrest records or conviction. Whenever a person enters into a diversion agreement, the person shall be informed of the ability to expunge the diversion.

(k) Subject to the disclosures required pursuant to subsection (i), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records, conviction or diversion of an offense has been expunged under this statute may state that such person has never been arrested, convicted or diverted of such offense.

(l) Whenever the record of any arrest, conviction or diversion has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction, diversion and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

(1) The person whose record was expunged;

(2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary for aging and disability services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the Kansas department for aging and disability services of any person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) a prosecuting attorney, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;

(7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;

(8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(9) the governor or the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission;

(10) the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications of the following under the Kansas expanded lottery act:

(A) Lottery gaming facility managers and prospective managers, racetrack gaming facility managers and prospective managers, licensees and certificate holders; and

(B) their officers, directors, employees, owners, agents and contractors;

(11) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications:

(A) To be an employee of the state gaming agency; or

(B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

(12) the Kansas securities commissioner, or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged;

(13) the attorney general, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to:

(A) Carry a concealed weapon pursuant to the personal and family protection act; or

(B) act as a bail enforcement agent pursuant to K.S.A. 75-7e01 through 75-7e09 and K.S.A. 50-6,141, and amendments thereto;

(14) the Kansas sentencing commission;

(15) the Kansas commission on peace officers' standards and training and the request is accompanied by a statement that the request is being made to aid in determining certification eligibility as a law enforcement officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto; or

(16) a law enforcement agency and the request is accompanied by a statement that the request is being made to aid in determining eligibility for employment as a law enforcement officer as defined by K.S.A. 22-2202, and amendments thereto.

(m) For the purposes of this section, the determination of when the person satisfied the sentence imposed excludes the payment of costs, fees, fines and restitution.

DISTRICT COURT CONVICTION EXPUNGEMENT

K.S.A. 2019 Supp. 21-6614. Expungement of certain convictions, arrest records and diversion agreements

(a)(1) Except as provided in subsections (b), (c), (d), (e) and (f), any person convicted in this state of a traffic infraction, cigarette or tobacco infraction, misdemeanor or a class D or E felony, or for crimes committed on or after July 1, 1993, any nongrid felony or felony ranked in severity levels 6 through 10 of the nondrug grid, or for crimes committed on or after July 1, 1993, but prior to July 1, 2012, any felony ranked in severity level 4 of the drug grid, or for crimes committed on or after July 1, 2012, any felony ranked in severity level 5 of the drug grid may petition the convicting court for the expungement of such conviction or related arrest records if three or more years have elapsed since the person: (A) Satisfied the sentence imposed; or (B) was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence.

(2) Except as provided in subsections (b), (c), (d), (e) and (f), any person who has fulfilled the terms of a diversion agreement may petition the district court for the expungement of such diversion agreement and related arrest records if three or more years have elapsed since the terms of the diversion agreement were fulfilled.

(b) Any person convicted of prostitution, as defined in K.S.A. 21-3512, prior to its repeal, convicted of a violation of K.S.A. 21-6419, and amendments thereto, or who entered into a diversion agreement in lieu of further criminal proceedings for such violation, may petition the convicting court for the expungement of such conviction or diversion agreement and related arrest records if:

(1) One or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; and

(2) such person can prove they were acting under coercion caused by the act of another. For purposes of this subsection, "coercion" means: Threats of harm or physical restraint against any person; a scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in bodily harm or physical restraint against any person; or the abuse or threatened abuse of the legal process.

(c) Except as provided in subsections (e) and (f), no person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, a community correctional

services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a class A, B or C felony, or for crimes committed on or after July 1, 1993, if convicted of an off-grid felony or any felony ranked in severity levels 1 through 5 of the nondrug grid, or for crimes committed on or after July 1, 1993, but prior to July 1, 2012, any felony ranked in severity levels 1 through 3 of the drug grid, or for crimes committed on or after July 1, 2012, any felony ranked in severity levels 1 through 4 of the drug grid, or:

(1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its repeal, or K.S.A. 21-5406, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(2) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(3) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto, or resulting from the violation of a law of another state which is in substantial conformity with that statute;

(4) violating the provisions of K.S.A. 8-142 Fifth, and amendments thereto, relating to fraudulent applications or violating the provisions of a law of another state which is in substantial conformity with that statute;

(5) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(6) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1603, prior to its repeal, or K.S.A. 8-1602 or 8-1604, and amendments thereto, or required by a law of another state which is in substantial conformity with those statutes;

(7) violating the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage; or

(8) a violation of K.S.A. 21-3405b, prior to its repeal.

(d)(1) No person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a first violation of K.S.A. 8-1567, and amendments thereto, including any diversion for such violation.

(2) No person may petition for expungement until 10 or more years have elapsed since the person satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a second or subsequent violation of K.S.A. 8-1567, and amendments thereto.

(3) Except as provided further, the provisions of this subsection shall apply to all violations committed on or after July 1, 2006. The provisions of subsection (d)(2) shall not apply to violations committed on or after July 1, 2014, but prior to July 1, 2015.

(e) There shall be no expungement of convictions for the following offenses or of convictions for an attempt to commit any of the following offenses:

(1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 21-5503, and amendments thereto;

(2) indecent liberties with a child or aggravated indecent liberties with a child, as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal, or K.S.A. 21-5506, and amendments thereto;

(3) criminal sodomy, as defined in K.S.A. 21-3505(a)(2) or (a)(3), prior to its repeal, or K.S.A. 21-5504(a)(3) or (a)(4), and amendments thereto;

(4) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior to its repeal, or K.S.A. 21-5504, and amendments thereto;

(5) indecent solicitation of a child or aggravated indecent solicitation of a child, as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal, or K.S.A. 21-5508, and amendments thereto;

(6) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 21-5510, and amendments thereto;

(7) internet trading in child pornography or aggravated internet trading in child pornography, as defined in K.S.A. 21-5514, and amendments thereto;

(8) aggravated incest, as defined in K.S.A. 21-3603, prior to its repeal, or K.S.A. 21-5604, and amendments thereto;

(9) endangering a child or aggravated endangering a child, as defined in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 21-5601, and amendments thereto;

(10) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal, or K.S.A. 21-5602, and amendments thereto;

(11) capital murder, as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 21-5401, and amendments thereto;

(12) murder in the first degree, as defined in K.S.A. 21-3401, prior to its repeal, or K.S.A. 21-5402, and amendments thereto;

(13) murder in the second degree, as defined in K.S.A. 21-3402, prior to its repeal, or K.S.A. 21-5403, and amendments thereto;

(14) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to its repeal, or K.S.A. 21-5404, and amendments thereto;

(15) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to its repeal, or K.S.A. 21-5405, and amendments thereto;

(16) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal, or K.S.A. 21-5505, and amendments thereto, when the victim was less than 18 years of age at the time the crime was committed;

(17) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to its repeal, or K.S.A. 21-5505, and amendments thereto;

(18) a violation of K.S.A. 8-2,144, and amendments thereto, including any diversion for such violation; or

(19) any conviction for any offense in effect at any time prior to July 1, 2011, that is comparable to any offense as provided in this subsection.

(f) Notwithstanding any other law to the contrary, for any offender who is required to register as provided in the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no expungement of any conviction or any part of the offender's criminal record while the offender is required to register as provided in the Kansas offender registration act.

(g)(1) When a petition for expungement is filed, the court shall set a date for a hearing of such petition and shall cause notice of such hearing to be given to the prosecutor and the arresting law enforcement agency. The petition shall state the:

(A) Defendant's full name;

(B) full name of the defendant at the time of arrest, conviction or diversion, if different than the defendant's current name;

(C) defendant's sex, race and date of birth;

(D) crime for which the defendant was arrested, convicted or diverted;

(E) date of the defendant's arrest, conviction or diversion; and

(F) identity of the convicting court, arresting law enforcement authority or diverting authority.

(2) Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$176. On and after July 1, 2019, through June 30, 2025, the supreme court may impose a charge, not to exceed \$19 per case, to fund the costs of non-judicial personnel. The charge established in this section shall be the only fee collected or moneys in the nature of a fee collected for the case. Such charge shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee.

(3) All petitions for expungement shall be docketed in the original criminal action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the prisoner review board.

(h)(1) At the hearing on the petition, the court shall order the petitioner's arrest record, conviction or diversion expunged if the court finds that:

~~(A1)~~ The petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;

~~(B2)~~ the circumstances and behavior of the petitioner warrant the expungement; and

~~(C3)~~ the expungement is consistent with the public welfare.

(2) The court shall not deny the petition for expungement due to the petitioner's inability to pay outstanding costs, fees, fines or restitution. The petitioner's unwillingness, rather than inability, to pay such costs, fees, fines or restitution may be considered as a factor in denying the petition for expungement.

(i) When the court has ordered an arrest record, conviction or diversion expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest, conviction or

diversion. If the case was appealed from municipal court, the clerk of the district court shall send a certified copy of the order of expungement to the municipal court. The municipal court shall order the case expunged once the certified copy of the order of expungement is received. After the order of expungement is entered, the petitioner shall be treated as not having been arrested, convicted or diverted of the crime, except that:

(1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

(2) the petitioner shall disclose that the arrest, conviction or diversion occurred if asked about previous arrests, convictions or diversions:

(A) In any application for licensure as a private detective, private detective agency, certification as a firearms trainer pursuant to K.S.A. 75-7b21, and amendments thereto, or employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the Kansas department for aging and disability services;

(B) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(C) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(D) to aid in determining the petitioner's qualifications for executive director of the Kansas racing and gaming commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(E) to aid in determining the petitioner's qualifications for the following under the Kansas expanded lottery act: (i) Lottery gaming facility manager or prospective manager, racetrack gaming facility manager or prospective manager, licensee or certificate holder; or (ii) an officer, director, employee, owner, agent or contractor thereof;

(F) upon application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

(G) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(H) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

(I) in any application for registration as a broker-dealer, agent, investment adviser or investment adviser representative all as defined in K.S.A. 17-12a102, and amendments thereto;

(J) in any application for employment as a law enforcement officer as defined in K.S.A. 22-2202 or 74-5602, and amendments thereto;

(K) to aid in determining the petitioner's qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act, K.S.A. 75-7c01 et seq., and amendments thereto; or

(L) to aid in determining the petitioner's qualifications for a license to act as a bail enforcement agent pursuant to K.S.A. 75-7e01 through 75-7e09 and K.S.A. 50-6,141, and amendments thereto;

(3) the court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed;

(4) the conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged; ~~and~~

(5) upon commitment to the custody of the secretary of corrections, any previously expunged record in the possession of the secretary of corrections may be reinstated and the expungement disregarded, and the record continued for the purpose of the new commitment; ~~;~~
and

(6) the petitioner shall continue to be responsible to fully satisfy any outstanding costs, fees, fines and restitution related to the arrest, conviction or diversion. For the purpose of collecting such outstanding costs, fees, fines or restitution, the following persons shall have access to any documents and information regarding the outstanding costs, fees, fines or restitution notwithstanding any expungement:

(A) The clerk of the court;

(B) a contracting agent as defined in K.S.A. 20-169, and amendments thereto;

(C) the petitioner and the petitioner's attorney;

(D) the beneficiary under an order of restitution as defined in K.S.A. 20-169, and amendments thereto, and such beneficiary's attorney;

(E) any other person as authorized by a court order if the court finds it is necessary for the person to have access to the documents and information for the purpose of collecting the outstanding costs, fees, fines or restitution.

(j) Whenever a person is convicted of a crime, pleads guilty and pays a fine for a crime, is placed on parole, postrelease supervision or probation, is assigned to a community correctional services program, is granted a suspended sentence or is released on conditional release, the person shall be informed of the ability to expunge the arrest records or conviction. Whenever a person enters into a diversion agreement, the person shall be informed of the ability to expunge the diversion.

(k)(1) Subject to the disclosures required pursuant to subsection (i), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records, conviction or diversion of a crime has been expunged under this statute may state that such person has never been arrested, convicted or diverted of such crime.

(2) Notwithstanding the provisions of subsection (k)(1), and except as provided in K.S.A. 21-6304(a)(3)(A), and amendments thereto, the expungement of a prior felony conviction does not relieve the individual of complying with any state or federal law relating to the use, shipment, transportation, receipt or possession of firearms by persons previously convicted of a felony.

(l) Whenever the record of any arrest, conviction or diversion has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction, diversion and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

(1) The person whose record was expunged;

(2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary for aging and disability services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the Kansas department for aging and disability services of any person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) a prosecutor, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;

(7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;

(8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(9) the governor or the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission;

(10) the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications of the following under the Kansas expanded lottery act: (A) Lottery gaming facility managers and prospective managers, racetrack gaming facility managers and prospective managers, licensees and certificate holders; and (B) their officers, directors, employees, owners, agents and contractors;

(11) the Kansas sentencing commission;

(12) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications: (A) To be an employee of the state gaming agency; or (B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-gaming compact;

(13) the Kansas securities commissioner or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged;

(14) the Kansas commission on peace officers' standards and training and the request is accompanied by a statement that the request is being made to aid in determining certification eligibility as a law enforcement officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto;

(15) a law enforcement agency and the request is accompanied by a statement that the request is being made to aid in determining eligibility for employment as a law enforcement officer as defined by K.S.A. 22-2202, and amendments thereto;

(16) the attorney general and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to:

(A) Carry a concealed weapon pursuant to the personal and family protection act; or

(B) act as a bail enforcement agent pursuant to K.S.A. 75-7e01 through 75-7e09 and K.S.A. 50-6,141, and amendments thereto; or

(17) the Kansas bureau of investigation for the purposes of:

(A) Completing a person's criminal history record information within the central repository, in accordance with K.S.A. 22-4701 et seq., and amendments thereto; or

(B) providing information or documentation to the federal bureau of investigation, in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm.

(m) The provisions of subsection (l)(17) shall apply to records created prior to, on and after July 1, 2011.

(n) For the purposes of this section, the determination of when the person satisfied the sentence imposed excludes the payment of costs, fees, fines and restitution.

**REPORT OF THE JUDICIAL COUNCIL JUVENILE OFFENDER / CHILD IN NEED OF CARE
ADVISORY COMMITTEE ON JUVENILE ADJUDICATION EXPUNGEMENT**

December 10, 2021

In November 2019, Christine Campbell, Kansas Legal Services' Statewide Pro Bono Director, asked the Judicial Council to evaluate the impact unpaid fines and fees have on expungement and consider whether unpaid costs, fees, fines, or restitution should be a reason to deny expungement. The Judicial Council referred the study to its Criminal Law Advisory Committee. The Criminal Law Advisory Committee made recommendations regarding the expungement of adult criminal convictions. The Criminal Law Advisory Committee did not have the necessary expertise to make recommendations regarding juvenile adjudication expungements; therefore, the Criminal Law Advisory Committee recommended the Judicial Council refer the study to the JO/CINC Advisory Committee. In December 2020, the Judicial Council accepted the Criminal Law Advisory Committee's recommendation and referred the study to the JO/CINC Advisory Committee to consider the impact of unpaid costs, fines, fees, and restitution on the expungement of juvenile adjudications.

COMMITTEE MEMBERSHIP

The members of the Judicial Council JO/CINC Advisory Committee are:

Hon. Patricia Macke Dick, Chair, Hutchinson; Chief District Court Judge in the 27th Judicial District and member of the Judicial Council.

Kristi Allen, Wichita; Assistant Sedgwick County District Attorney.

Kathy L. Armstrong, Shawnee Mission; Assistant General Counsel for Preventive and Protection Services, Kansas Department for Children and Families.

Charlene Brubaker, Hays; Assistant Ellis County Attorney.

Caitlyn Eakin, Topeka; State Director of Kansas CASA Association.

Donald W. Hymer, Olathe; Assistant District Attorney in Johnson County.

Hon. Greg Keith, Wichita; District Court Judge in the 18th Judicial District.

Rep. Annie Kuether, Topeka; State Representative from the 55th District.

Rep. Brenda Landwehr, Wichita; State Representative from the 105th District.

Prof. Richard E. Levy, Lawrence; J.B. Smith Distinguished Professor of Constitutional Law at the University of Kansas School of Law.

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.

BACKGROUND

In 2020, the Judicial Council’s Criminal Law Advisory Committee considered the impact of unpaid costs, fees, fines, and restitution on the expungement of adult criminal convictions. The Criminal Law Advisory Committee recommended the adult expungement statutes, K.S.A. 2019 Supp. 12-4516 and 21-6614, be amended in the following ways:

(1) to allow the expungement waiting period to begin before the person has completed payment of costs, fees, fines, or restitution;

(2) to prohibit courts from denying an expungement due to the petitioner’s inability to pay costs, fees, fines, or restitution;

(3) to require payment of costs, fines, fees, and restitution after expungement; and

(4) to allow certain people to access documents and information regarding the costs, fines, fees, and restitution after the expungement for the purpose of collecting the debt.

These recommendations were accepted by the Judicial Council¹ and submitted to the Kansas legislature for consideration in 2021 S.B. 105.²

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. 2020 Supp. 38-2312. Not all juvenile adjudications are expungable; however, in general, if an

¹ The Final Report of the Criminal Law Advisory Committee on Expungement and Unpaid Costs, Fees, Fines, and Restitution (December 2020) can be found on the Judicial Council website, <http://www.kansasjudicialcouncil.org/Documents/Studies%20and%20Reports/2020%20Reports/Expungement%20Fines%20and%20Fees%20Report.pdf>.

² At the time of this report, 2021 S.B. 105 had not been passed by the Kansas legislature.

adjudication is expungable, the court shall order the expungement of the record and files if the court finds:

- (1) the juvenile has reached 23 years of age or the statutorily prescribed waiting period has elapsed (0, 1, or 2 years);
- (2) 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
- (3) the circumstances and behavior of the petitioner warrant expungement.

See K.S.A. 2020 Supp. 38-2312(e).

DISCUSSION

Waiting Period

In adult criminal expungement, depending on the type of conviction, a person may not file a petition for expungement until a certain number of years (1, 3, 5 or 10 years) have passed.³ The Criminal Law Advisory Committee agreed that requiring the payment of all fines, fees, court costs, and restitution before this “waiting period” begins is a heavy burden on indigent offenders. The Criminal Law Advisory Committee recommended statutory amendments with the goal of allowing the required waiting period to begin even if costs, fees, fines, or restitution are not yet paid in full.

The juvenile adjudication expungement waiting period (0, 1, or 2 years) begins at “final discharge.”⁴ Unlike in adult criminal cases, “final discharge” is an easily identifiable event that occurs within a relatively short timeframe in all juvenile offender cases regardless of whether the juvenile has unpaid costs, fees, fines, or restitution. The Kansas juvenile offender statutes set overall case length limits on juvenile offender cases (12, 15, or 18 months).⁵ Regardless of whether the juvenile has fulfilled all the requirements of his or her program or probation, including payment of costs, fees, fines, and restitution, when the case length limit is reached the court’s jurisdiction ends, the juvenile is discharged, and the waiting period required for expungement begins. The JO/CINC Advisory Committee agreed that the failure to pay costs, fees, fines or restitution does not prevent the expungement waiting period from beginning because

³ K.S.A. 2020 Supp. 12-4516 and 21-6614.

⁴ K.S.A. 2020 Supp. 38-2312(e)(1).

⁵ K.S.A. 2020 Supp. 38-2391(b).

there is a definite point in every juvenile offender case when the juvenile will be discharged regardless of any failure to pay costs, fees, fines, or restitution. Therefore, the Committee does not recommend any statutory amendments regarding the required “waiting period” for juvenile adjudication expungement.

Ruling on Expungement

In its study, the Criminal Law Advisory Committee concluded some courts were denying adult conviction expungement based solely on unpaid costs, fines, fees, or restitution even if the petitioner was unable to pay those outstanding balances. In juvenile offender cases, the JO/CINC Advisory Committee members reported that at the end of the case, some jurisdictions cancel any unpaid costs, fines, fees, or restitution, while in other jurisdictions, outstanding costs, fees, fines, or restitution are sent to collections. Generally, outstanding costs, fines, fees, and restitution are not barriers to juvenile adjudication expungement; however, it could be in some cases. The Committee agreed it is helpful for the juvenile expungement statute to mirror language in the adult expungement statutes. Therefore, the Committee recommends K.S.A. 2020 Supp. 38-2312(e)(2) mirror the language recommended by the Criminal Law Advisory Committee to prohibit the court from denying the petition for expungement 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.

The Committee also recommends the subsection include 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. The Committee recommended K.S.A. 2020 Supp. 38-2312(e)(2) be amended as follows:

~~“(2) The court may require that all court costs, fees and restitution shall be paid. The court shall not deny the petition for expungement due to the juvenile’s inability to pay outstanding costs, fees, fines, or restitution. An unwillingness, rather than inability, to pay such fees and costs can be a factor in denying expungement. Unless the court orders to the contrary, expungement shall not release the juvenile from the obligation to pay outstanding costs, fees, fines, or restitution.~~

Collection of Outstanding Debt

Generally, when a record is expunged, it is sealed and only accessible by a limited number of people in specific circumstances. To facilitate the collection of outstanding debt after an adult conviction expungement, the Criminal Law Advisory Committee recommended K.S.A. 2020 12-4516(i) and 21-6614(i) include a subsection allowing a list of individuals limited access to documents and information regarding the outstanding costs, fees, fines, or restitution. While costs, fees, fines, and restitution are ordered in juvenile offender cases, the amount of the costs, fee, fine, or restitution is often lower than in an adult case, taking into consideration that the payor is a minor without the earning capacity of an adult. The JO/CINC Advisory Committee agreed that post expungement record access for collection purposes is a rare problem; however, while evaluating the request for expungement, if the court is concerned about the ability to collect the debt after the expungement, K.S.A. 2020 Supp. 38-2312(k)(5) already allows the court, in the expungement order, to specifically order that certain people have access to the record.

Adjudication and Conviction History

Though unrelated to the issue of payment of costs, fines, fees, and restitution, the JO/CINC Advisory Committee took up another juvenile expungement issue identified by Kansas Legal Services. K.S.A. 2020 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 adult expungement statutes⁶, the juvenile expungement statute does not limit the review of the petitioner’s criminal history to felonies within the two years preceding the filing of the petition for expungement. Because the juvenile adjudication expungement statutes require a review of the petitioner’s entire criminal history without limiting the review to felonies convictions within a set timeframe, the statute creates a higher barrier to expungement of a juvenile adjudication than an adult conviction.

The JO/CINC Advisory Committee agreed the juvenile adjudication and criminal conviction history requirements for expunging a juvenile adjudication should not be higher than the requirements for expunging an adult conviction. Therefore, the Committee recommends K.S.A. 38-2312(e)(1)(B) be amended as follows:

⁶ 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).

“(B) ~~since the final discharge of the juvenile,~~ in the past two years, the juvenile has not been convicted of a felony ~~or of a misdemeanor other than a traffic offense~~ or adjudicated as a juvenile offender under the revised Kansas juvenile justice code and no proceedings are pending seeking such a conviction or adjudication; . . .”

RECOMMENDATIONS

The Committee recommends K.S.A. 2020 Supp. 38-2312(e) be amended in the following ways:

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

The Committee requests the Judicial Council request introduction of the Committee’s recommendations in the next legislative session.

Committee's Statutory Amendment Recommendations

K.S.A. 2020 Supp. 38-2312. Expungement of records; docket fee

(a) Except as provided in subsections (b) and (c), any records or files specified in this code concerning a juvenile may be expunged upon application to a judge of the court of the county in which the records or files are maintained. The application for expungement may be made by the juvenile, if 18 years of age or older or, if the juvenile is less than 18 years of age, by the juvenile's parent or next friend.

(b) There shall be no expungement of records or files concerning acts committed by a juvenile which, if committed by an adult, would constitute a violation of K.S.A. 21-3401, prior to its repeal, or K.S.A. 21-5402, and amendments thereto, murder in the first degree; K.S.A. 21-3402, prior to its repeal, or K.S.A. 21-5403, and amendments thereto, murder in the second degree; K.S.A. 21-3403, prior to its repeal, or K.S.A. 21-5404, and amendments thereto, voluntary manslaughter; K.S.A. 21-3404, prior to its repeal, or K.S.A. 21-5405, and amendments thereto, involuntary manslaughter; K.S.A. 21-3439, prior to its repeal, or K.S.A. 21-5401, and amendments thereto, capital murder; K.S.A. 21-3442, prior to its repeal, or K.S.A. 21-5405(a)(3) or (a)(5), and amendments thereto, involuntary manslaughter while driving under the influence of alcohol or drugs; K.S.A. 21-3502, prior to its repeal, or K.S.A. 21-5503, and amendments thereto, rape; K.S.A. 21-3503, prior to its repeal, or K.S.A. 21-5506(a), and amendments thereto, indecent liberties with a child; K.S.A. 21-3504, prior to its repeal, or K.S.A. 21-5506(b), and amendments thereto, aggravated indecent liberties with a child; K.S.A. 21-3506, prior to its repeal, or K.S.A. 21-5504(b), and amendments thereto, aggravated criminal sodomy; K.S.A. 21-3510, prior to its repeal, or K.S.A. 21-5508(a), and amendments thereto, indecent solicitation of a child; K.S.A. 21-3511, prior to its repeal, or K.S.A. 21-5508(b), and amendments thereto, aggravated indecent solicitation of a child; K.S.A. 21-3516, prior to its repeal, or K.S.A. 21-5510, and amendments thereto, sexual exploitation of a child; K.S.A. 21-5514(a), and amendments thereto, internet trading in child pornography; K.S.A. 21-5514(b), and amendments thereto, aggravated internet trading in child pornography; K.S.A. 21-3603, prior to its repeal, or K.S.A. 21-5604(b), and amendments thereto, aggravated incest; K.S.A. 21-3608, prior to its repeal, or K.S.A. 21-5601(a), and amendments thereto, endangering a child; K.S.A. 21-3609, prior to its repeal, or K.S.A. 21-5602, and amendments thereto, abuse of a child; or which would constitute an attempt to commit a violation of any of the offenses specified in this subsection.

(c) Notwithstanding any other law to the contrary, for any offender who is required to register as provided in the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no expungement of any conviction or any part of the offender's criminal record while the offender is required to register as provided in the Kansas offender registration act.

(d) When a petition for expungement is filed, the court shall set a date for a hearing on the petition and shall give notice thereof to the county or district attorney. The petition shall state: (1) The juvenile's full name; (2) the full name of the juvenile as reflected in the court record, if different than (1); (3) the juvenile's sex and date of birth; (4) the offense for which the juvenile

was adjudicated; (5) the date of the trial; and (6) the identity of the trial court. Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$176. On and after July 1, 2019, through June 30, 2025, the supreme court may impose a charge, not to exceed \$19 per case, to fund the costs of non-judicial personnel. All petitions for expungement shall be docketed in the original action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.

(e)(1) After hearing, the court shall order the expungement of the records and files if the court finds that:

(A)(i) The juvenile has reached 23 years of age or that two years have elapsed since the final discharge;

(ii) one year has elapsed since the final discharge for an adjudication concerning acts committed by a juvenile which, if committed by an adult, would constitute a violation of K.S.A. 21-6419, and amendments thereto; or

(iii) the juvenile is a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child, the adjudication concerned acts committed by the juvenile as a result of such victimization, including, but not limited to, acts which, if committed by an adult, would constitute a violation of K.S.A. 21-6203 or 21-6419, and amendments thereto, and the hearing on expungement occurred on or after the date of final discharge. The provisions of this clause shall not allow an expungement of records or files concerning acts described in subsection (b);

(B) ~~since the final discharge of the juvenile, in the past two years,~~ the juvenile has not been convicted of a felony ~~or of a misdemeanor other than a traffic offense~~ or adjudicated as a juvenile offender under the revised Kansas juvenile justice code and no proceedings are pending seeking such a conviction or adjudication; and

(C) the circumstances and behavior of the petitioner warrant expungement.

(2) ~~The court may require that all court costs, fees and restitution shall be paid. The court shall not deny the petition for expungement due to the juvenile's inability to pay outstanding costs, fees, fines, or restitution. An unwillingness, rather than inability, to pay such fees and costs can be a factor in denying expungement. Unless the court orders to the contrary, expungement shall not release the juvenile from the obligation to pay outstanding costs, fees, fines, or restitution.~~

(f) Upon entry of an order expunging records or files, the offense which the records or files concern shall be treated as if it never occurred, except that upon conviction of a crime or adjudication in a subsequent action under this code the offense may be considered in determining the sentence to be imposed. The petitioner, the court and all law enforcement officers and other public offices and agencies shall properly reply on inquiry that no record or

file exists with respect to the juvenile. Inspection of the expunged files or records thereafter may be permitted by order of the court upon petition by the person who is the subject thereof. The inspection shall be limited to inspection by the person who is the subject of the files or records and the person's designees.

(g) A certified copy of any order made pursuant to subsection (a) or (d) shall be sent to the Kansas bureau of investigation, which shall notify every juvenile or criminal justice agency which may possess records or files ordered to be expunged. If the agency fails to comply with the order within a reasonable time after its receipt, such agency may be adjudged in contempt of court and punished accordingly.

(h) The court shall inform any juvenile who has been adjudicated a juvenile offender of the provisions of this section.

(i) Nothing in this section shall be construed to prohibit the maintenance of information relating to an offense after records or files concerning the offense have been expunged if the information is kept in a manner that does not enable identification of the juvenile.

(j) Nothing in this section shall be construed to permit or require expungement of files or records related to a child support order registered pursuant to the revised Kansas juvenile justice code.

(k) Whenever the records or files of any adjudication have been expunged under the provisions of this section, the custodian of the records or files of adjudication relating to that offense shall not disclose the existence of such records or files, except when requested by:

(1) The person whose record was expunged;

(2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary for aging and disability services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the Kansas department for aging and disability services of any person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas

lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(7) the governor or the Kansas racing commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission;

(8) the Kansas sentencing commission; or

(9) the Kansas bureau of investigation, for the purposes of:

(A) Completing a person's criminal history record information within the central repository in accordance with K.S.A. 22-4701 et seq., and amendments thereto;
or

(B) providing information or documentation to the federal bureau of investigation, in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm.

(l) The provisions of subsection (k)(9) shall apply to all records created prior to, on and after July 1, 2011.