

SESSION OF 2023

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2113

As Amended by House Committee on
Corrections and Juvenile Justice

Brief*

HB 2113, as amended, would amend law to prohibit the denial of a petition for expungement due to the petitioner's inability to pay outstanding costs, fees, or fines.

Outstanding Costs, Fees, or Fines (Sections 1, 2, and 3)

The bill would amend the laws relating to expungements in the Kansas Code of Procedure for Municipal Courts, a sentencing statute, and the Revised Kansas Juvenile Justice Code. The bill would direct the court not to deny a petition for expungement due to a petitioner's inability to pay outstanding costs, fees, or fines and would distinguish between an inability to pay and an unwillingness to pay. The bill would clarify the court may grant a petition when the petitioner owes outstanding restitution and the petitioner continues to be responsible for paying outstanding costs, fees, fines, and restitution related to their arrest, conviction, or diversion. The record of outstanding moneys would be accessible by:

- the clerk of the court;
- a contracting agent as defined in the Kansas Code of Procedure for Municipal Courts;
- the petitioner and the petitioner's attorney;
- the beneficiary of the restitution; and

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

- any other person as authorized by a court order if the court finds it is necessary.

The bill would amend the Revised Kansas Juvenile Justice Code to authorize expungement of a juvenile adjudication if the juvenile has not committed a felony offense in the previous two years and no proceedings are pending for such a conviction or adjudication.

District Court Expungement (Section 2)

The bill would amend the law regarding district court expungements to allow an individual to petition to expunge both their conviction and related arrest records, instead of filing a separate petition for each instance.

Background

The bill was introduced by the Joint Committee on Corrections and Juvenile Justice [Note: The Joint Committee on Corrections and Juvenile Justice met in November 2022, and, as one of the topics discussed, heard testimony regarding the accessibility of expungement in Kansas.]

House Committee on Corrections and Juvenile Justice

In the bill hearing on January 31, 2023, a private citizen presented **proponent** testimony, stating the bill would increase access to expungements and is aligned with the Judicial Council Advisory Committee's 2020 and 2021 recommendations.

Representatives of the American Civil Liberties Union Kansas, the Kansas Association of Counties, and the State Board of Indigents' Defense Services Legislative Committee submitted written-only proponent testimony stating the bill would increase access to expungements which, in turn, will

give individuals better economic opportunity to pay off their outstanding fines, fees, and restitution.

A representative of the Kansas County and District Attorney's Association submitted written **opponent** testimony explaining to start counting time until expungement from the moment of conviction could allow an individual with a 20-year prison sentence to be released in three years after getting the conviction expunged.

Neutral testimony was presented by representatives of the Kansas Association of Chiefs of Police, the Kansas Sheriffs Association, and the Kansas Peace Officers Association and the League of Kansas Municipalities. The testimony supported the distinction made between "inability to pay" and "unwillingness to pay," and that starting the clock for eligibility at the moment of conviction should be reconsidered.

A representative of the Kansas Judicial Council submitted neutral written testimony explaining the thought process behind the Judicial Council Advisory Committee's recommendations.

The House Committee amended the bill to retain current law starting the clock for a petitioner to qualify for expungement after either satisfying the sentence or being discharged from probation, parole, or a suspended sentence. The House Committee also amended the bill to allow the same list of parties to access juvenile records of outstanding costs, fees, fines, and restitution, and to remove inability to pay restitution from the list of reasons a judge shall not deny expungement. The House Committee also amended the bill to clarify that a judge may grant expungement when the petitioner owes outstanding restitution. Finally, the House Committee made a technical amendment to the bill.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, any fiscal effect associated with enactment of the bill cannot be estimated by the Office of Judicial Administration until the Judicial Branch has the opportunity to operate under the bill's provisions. The OJA states the enactment of the bill could result in a decrease of revenue from collection of the outstanding fees, costs, fines, and restitution.

The League of Kansas Municipalities states enactment of the bill as introduced would have a negligible fiscal effect on Kansas cities, and the Kansas Association of Counties states it would have an effect if it leads to a high rate of failure to pay court costs and fees. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2024 Governor's Budget Report*.

Expungement; restitution; court fines and fees; juvenile expungement