

Testimony in Support of HB 2028

Marilyn Harp, JD

Citizen Lobbyist

For the past 40 years, I have been working with low income people, trying to reduce the impacts of poverty on their lives. In that time, I have found three things I could do for them that really moved the needle. Those things include getting Social Security Disability Benefits for those who are unable to work, due to severe medical conditions, restoring their access to a valid driver's license and sealing their criminal record from public view. This bill will help with the latter item on that list.

Others have spoken about the profound impact of expungement on lives. I want to share what research says. A University of Michigan Law School study in 2020 found that in the first year after expungement a person's wages improve by about 23%. Women and Black recipients' see higher wage increases than white men.

That same study estimated that only 6.5% of people who meet the legal requirements for expungement in Michigan get their record cleared in the first five years of eligibility.¹

There is nothing else I could do as a poverty lawyer that made that much impact on the financial wellbeing of low income people. This legislative could begin a process that could have that effect on many people.

This bill does not do anything to change Kansas expungement law regarding what convictions can be expunged. A chart of the process, which has been deemed difficult by many, including the recent reflections of the Joint Committee on Corrections and Juvenile Justice Oversight, is attached.

Since 2019, I have been involved with research done by Harvard Law School Access to Justice Labs. This study is looking at the wage impact on Kansas families where a household member receives an expungement. It is also looking at the success rate when people receive assistance in obtaining that expungement through self representation. This group of over 150 people were provided all the information they needed to answer the list of questions needed in an expungement petition. (This information is already known to the Court and the Prosecutor, but we make defendants go back and determine what law enforcement agency arrest them and on what date, for example.) They were told that they were eligible for expungement. They were given access to a computer program that completed all the paperwork they needed to file for expungement, including a waiver of the filing fee. They had the opportunity to talk with a lawyer, both about the law and the process in their particular county for moving forward with an expungement. Despite that support, only about 15% of these study participants ever filed the papers with the court to seek a sealing of their criminal record from public view. The success rate of self represented persons was compared with another group who were

¹ Expungement of Criminal Convictions: An Empirical Study J.J. Prescott University of Michigan Law School, jprescott@umich.edu Sonja B. Starr University of Michigan Law School, sbstarr@umich.edu Available at: <https://repository.law.umich.edu/articles/2165>

provided full representation by an attorney at Kansas Legal Services. The research makes clear, we need a simpler solution to public record clearing. This bill starts that process.

Those familiar with expungement will see that this process uses technology to resolve an issue that has plagued prior solutions. If defendants can't get the paperwork together and prosecutors can't initiate a record sealing process, how can we simplify the process? We can let technology begin the process. The computer can review the search criteria and start the process. The prosecutor can seek a hearing, if they wish. The Judge can sign the paperwork, when it is appropriate. No Petition to be completed, no information to provide to the Prosecutor. But a court order that is individually reviewed and meets the needs of the KBI. The KBI requires an individualized, rather than blanket expungement process, due to requirements of Kansas' participation in the National Crime Information Center (NCIC).

Why does this bill focus on not guilty, dismissed charges?

The reason for the focus on not guilty and dismissed cases is a weird quirk in current Kansas law. The law allows an expungement 1 – 10 years after completion of a sentence following a **conviction**. Kansas law is silent about when a person can seek public record sealing of dismissed cases or those in which they have been found not guilty. Kansas law should clarify this point. It should be possible to seal a not guilty finding. It should be faster to seal a not guilty finding than a finding of guilty to a charge.

There are some states that limit public record sealing to only not guilty or dismissed cases. It is surprising to many that Kansas allows sealing of many convictions, but does not address dismissed or not guilty cases.

The term dismissed cases includes cases where a defendant is granted diversion. Under that sentencing structure, a defendant confesses guilt and is put on a sentence that promises to dismiss the case, pending completion of certain terms of diversion. The defendant assumes that if they complete diversion, the case goes away. However, the dismissal of a case doesn't seal the court record from public view. Employers can easily see the charge and the disposition of the case from public court records. The promise of diversion, a dismissal of the case, is not what the defendant believes it to be. Currently, another step is required in order to seal the record from public view. This legislation would remedy that issue, allowing an automated sealing of these records from public view.

TO BE ELIGIBLE FOR EXPUNGEMENT ON YOUR CONVICTION OR DIVERSION:

1. MUST BE AN ELIGIBLE OFFENSE

NOT eligible for expungement:

- Capital Murder
- Murder in first degree
- Murder in second degree
- Voluntary manslaughter
- Involuntary manslaughter while driving under the influence
- Sexual battery (victim less than 18)
- Aggravated sexual battery
- Commercial driving under the influence
- Any comparable offense
- Rape
- Indecent Liberties with a child
- Aggravated indecent liberties with a child
- Criminal sodomy
- Aggravated criminal sodomy
- Indecent solicitation of a child
- Aggravated Incest
- Endangering a child
- Aggravated endangering a child
- Abuse of a child

5. CONSISTENT WITH PUBLIC WELFARE

4. CIRCUMSTANCES AND BEHAVIOR WARRANT EXPUNGEMENT

ELIGIBLE FOR EXPUNGEMENT!

3. NO FELONY CONVICTIONS WITHIN LAST 2 YEARS AND NO PENDING FELONY CHARGES

Three year wait time:

- Traffic infraction
- Cigarette or tobacco infraction
- Misdemeanor
- Class D or E felony
- Severity level 6-10 non-drug crime (except after 2012)

Five year wait time:

- Class A, B, or C felony
- Off-grid felony
- Severity level 1-5 non-drug felony
- Severity level 1-3 drug crime
- Vehicular homicide
- Driving while cancelled/suspended/revoked
- Perjury
- Applying for title of motor vehicle under false name/address
- Any crime punishable as felony where motor vehicle used
- Failing to stop at scene of accident
- Failing to have motor vehicle insurance
- DUI (most first DUIs, second will be different)

2. REQUIRED AMOUNT OF TIME HAS PASSED SINCE SATISFACTION OF