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MEMORANDUM

To: House Committee on Judiciary
From: Office of Revisor of Statutes
Date: January 25, 2023
Subject: Bill Brief on HB 2028

HB 2028 requires certain records to be automatically expunged from a person's criminal record. The bill enacts a new section of law that would provide that if a court enters an order of acquittal or dismissal of criminal charges, the court shall order the record of such charges and related arrest records expunged 30 days after such order is entered unless the person objects to the expungement or an appeal is filed. If an appeal is filed and the appellate court issues a mandate affirming the district court's dismissal, the district court shall order the records expunged 30 days after the mandate is filed. An order expunging records shall not require any action by the person.

A person who has been charged with a criminal offense and acquitted or dismissed and whose records have not been expunged automatically may petition the court in which the disposition of charges was made to expunge all charges and related arrest records. Such petition shall be filed not sooner than 60 days after the order of acquittal or dismissal. The new expungement provisions shall not apply to diversion agreements for a violation of driving under the influence.

After a petition is filed, the court shall notify the prosecutor and provide such prosecutor an opportunity to respond. If the prosecutor objects, the court shall set the matter for hearing and the prosecutor shall notify any victim. If no objection is made, the court shall order the expungement of such records 30 days after the filing of the petition. If the court finds a petition is properly filed, the court shall grant the petition and order the records expunged if the court finds such order is consistent with the public welfare.

An order of expungement under this section shall expunge all criminal records in the custody of the court any criminal records in the custody of another agency or official, including

law enforcement records. When an court issues an order of expungement under this section, the clerk of the court shall send a certified copy of the order to the KBI. The KBI shall notify the FBI, the secretary of corrections, the appellate courts and any other criminal justice agency that may have records. If the case was appealed from municipal court, the clerk shall send such copy to the municipal court. After the order of expungement is entered, the petitioner shall be treated as not having been arrested, charged, acquitted, dismissed or diverted of the crime except that upon conviction of another crime, a diversion that was expunged may be considered as a prior conviction for determining a sentence and it may be considered for certain applications for licensure. Any appellate court that issued an opinion in the case shall order the appellate case file to be sealed and any version of the opinion on the court's website to be modified to avoid use of the defendant's name.

Except for the disclosures required in subsection (c), in an application for employment, licensure or other civil right or privilege, a person whose record of arrest, acquittal, dismissal or diversion have been expunged may state that such person has never been arrested, charged, acquitted, dismissed or diverted of the crime. A person whose record has been expunged shall be deemed to have had such person's right to keep and bear arms fully restored. When records are expunged under this section, the custodian of such records shall not disclose the existence of such records unless requested by certain entities for an authorized use. As used in this section, "criminal charges" does not include a traffic infraction that isn't a misdemeanor. The provisions of this section except for subsection (a)(1) shall be retroactive.

Section 2 amends K.S.A. 21-6614, which is the expungement statute, to remove references to diversion agreements since those will be expunged pursuant to this new section.