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**TO: House Judiciary Committee**

**FROM: Kansas Judicial Council – Laura Nordgren, Staff Attorney**

**DATE: January 25, 2023**

**Re: Neutral Testimony on 2023 H.B. 2028 – Requiring certain records to be automatically expunged from a person's criminal record – WRITTEN ONLY**

2023 H.B. 2028 is based on the recommendations of the Judicial Council's Criminal Law Advisory Committee (Committee). The Committee's report is attached.

The report recommended against passage of 2021 H.B. 2226 and concluded that broadly applied automated expungement of convictions is not yet feasible in Kansas due to the factors set out in the report. However, the Committee did recommend the creation of an automatic expungement and more streamlined defendant-initiated expungement petition process for non-conviction records, including cases resulting in an acquittal, dismissal with prejudice, dismissal without prejudice, or diversions. The discussion regarding automatic expungement for non-conviction records begins on page 10 of the report.

**REPORT OF THE JUDICIAL COUNCIL CRIMINAL LAW ADVISORY COMMITTEE  
ON AUTOMATIC EXPUNGEMENT**

December 10, 2021

In May 2021, Representative Fred Patton asked the Judicial Council to study 2021 H.B. 2226 regarding the automatic expungement of certain criminal convictions. The Judicial Council accepted the study request and assigned it to the Criminal Law Advisory Committee with the addition of ad hoc members with expertise in expungements.

**COMMITTEE MEMBERSHIP**

The members of the Criminal Law Advisory Committee (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

Ad hoc members are:

**Shawn DeJarnett**, Municipal court prosecutor; Wellington

**John Goodyear**, Attorney with the League of Kansas Municipalities; Topeka

**Marilyn Harp**, Executive Director of Kansas Legal Services; Topeka

**John Houston**, Office of Judicial Administration; Topeka

### **COMMITTEE RECOMMENDATIONS**

- The Committee recommends against the passage of 2021 H.B. 2226.
- After the transition to the Kansas district court unified case management system is complete, the Committee recommends the feasibility of a case identifying software, such as Utah's, be studied and considered for implementation in Kansas as part of an automatic or clean slate expungement program.
- If the Kansas legislature implements automatic expungement of convictions, the Committee recommends the use of Utah's automatic expungement process as a starting point for discussion.
- The Committee recommends against modeling Kansas' expungement process after any state that is not a member of the National Crime Prevention and Privacy Compact Act of 1998.
- The Committee recommends the creation of an automatic expungement and more streamlined defendant-initiated expungement petition process for non-conviction records, including cases resulting in an acquittal, dismissal with prejudice, or dismissal without prejudice.

### **BACKGROUND / METHOD OF STUDY**

2021 H.B. 2226 required certain criminal conviction be expunged from an offender's record automatically. The bill modified the municipal court and district court expungement statutes to require the majority of expungable offenses to be automatically expunged. The bill placed the burden of tracking and determining whether an offense may

qualify for an expungement on the prosecutor in the convicting court. The bill required the prosecutor to file the petition for expungement and the court to grant the expungement without any affirmative action or communication with the offender.

H.B. 2226 was introduced in the House and referred to the House Judiciary Committee. It received a hearing in the House Judiciary Committee on February 8, 2021. Proponents of the bill strongly supported expungements to reduce barriers to employment, housing, and other services for individuals with criminal records. The proponents also explained that expungement decreases a person's risk of recidivism because the person is then able to qualify for stable employment and housing. The proponents identified aspects of the current expungement process that are barriers to obtaining an expungement. The barriers included the payment of the required filing fee, gathering of the information required to be included in the petition, the completion and filing of the legal paperwork without the assistance of an attorney, and the lack of knowledge that the person is eligible to seek an expungement at all. The proponents hoped to remove these barriers by making the prosecutor's office responsible for initiating the expungement process and completing the required paperwork.

The opponents of the bill agreed that expungement is important and reducing barriers to expungement can then reduce barriers to access employment and housing. However, the opponents argued the bill was not creating an automatic expungement system, rather it was shifting the burdens associated with the expungement process from the offender to the prosecutor and court. To accommodate the new responsibilities, prosecutors would require the hiring of additional attorneys and staff and the purchase or creation of new software to track cases. Courts would also require additional staff and possibly the addition of more judges to handle the increased case load.

Even if budgets were expanded for new staff and software, prosecutors explained that requiring prosecutors to complete and file the petition for expungement violates the Kansas Rules of Professional Conduct for attorneys. The prosecutor represents the state or municipality. Representing the offender in the case by filing a petition for expungement would create a conflict of interest violating Rule 1.7 of the Kansas Rules of Professional Conduct. Additionally, the bill seemed to directly violate the Kansas Victim's Rights Act

by providing no mechanism of notice of the pending expungement to the victims of the offense or allowing victims the opportunity to object to the expungement.

The Kansas Bureau of Investigation provided neutral testimony to alert the legislature that the bill potentially violated Kansas' responsibilities as a member of the National Crime Prevent and Privacy Compact.

Based on the issues discussed during the legislative hearing, Chairman Patton requested the Judicial Council study H.B. 2226, the issue of automatic expungement, and the issues raised at the legislative hearing. The Criminal Law Advisory Committee met three times via Zoom during the fall of 2021. In the course of the study, the Committee reviewed H.B. 2226, all written proponent, opponent, and neutral legislative hearing testimony, Kansas's current expungement statutes, expungement statutes from 17 other states, and received assistance from the Kansas Bureau of Investigation regarding the provisions of the National Crime Prevention and Privacy Compact, Kansas' obligations under the Compact, and how other states' statutes comply with the Compact.

## **DISCUSSION**

### **2021 H.B. 2226**

The Committee recommends against the passage of 2021 H.B. 2226. As discussed by the legislative hearing conferees, there are many practical, logistical, and ethical problems with the process set out in the bill. Additionally, the bill would remove the defendant-initiated petition for expungement process which the Committee recommends be maintained regardless of whether an automatic expungement process is created.

### **The National Crime Prevention and Privacy Compact**

The National Crime Prevention and Privacy Compact Act of 1998 (the Compact) was signed into law in October 1998. The Compact provides federal authority for the interstate exchange of state criminal history record information for non-criminal justice purposes. To date, 34 states have ratified the Compact, including Kansas, and 10 states and territories participate in the Compact through memorandums of understanding. Twelve states and territories have not taken any action regarding the Compact. Those

states and territories are: Alabama, California, Commonwealth of the Northern Mariana Islands, District of Columbia, Indiana, Massachusetts, Pennsylvania, Rhode Island, Texas, U.S. Virgin Islands, Washington, and Wisconsin.

The Compact authorizes the exchange of criminal history records excluding “sealed records.”<sup>1</sup> An adult’s record can qualify as “sealed” if the record is “subject to restrictions on dissemination for noncriminal justice purposes pursuant to a court order related to a particular subject or pursuant to a Federal or State statute that requires action on a sealing petition filed by a particular record subject.”<sup>2</sup> Based on this definition, and the official Section-by-Section Analysis of the Compact Act explanation of the definition, a record is sealed if there is a court order specifically prohibiting the disclosure of the specific record. In Kansas, this would be a court order expunging a record. Records that are sealed, or in Kansas terminology “expunged,” without a court order or by a blanket court order that applies to many different offenders and cases, such as an order expunging all first-time non-serious drug offenses, does not meet the requirements for a sealed record under the Compact.

As a member of the Compact, any expungement laws in Kansas must comply with the Compact.

### **Automatic Expungement**

“Automatic” expungement does not describe one process. While some states have a broad automatic expungement process enabling the expungement of a variety of cases,<sup>3</sup> others have only enacted an automatic expungement process for a limited type of case.<sup>4</sup> Each state structures their automatic expungement processes differently. Generally, in an automatic expungement process, the defendant is not responsible for filing a petition. Instead, it could be that a computer program matches cases that are potentially expungement eligible, and that identification begins a review process by a prosecutor or the court that may ultimately result in the expungement of that case with or

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<sup>1</sup> National Crime Prevention and Privacy Compact, Article IV (a) & (b).

<sup>2</sup> National Crime Prevention and Privacy Compact, Article I(21).

<sup>3</sup> See e.g. Mich. Comp. Laws § 780.621g; 18 Pa. Stat. § 9122.2-9122.3; and Utah Code Ann. § 77-40-101, *et seq.*

<sup>4</sup> See e.g., Ken. Rev. Stat. Ann. § 431.076 and N.Y. Crim. Proc. Law § 160.50.

without the defendant's participation.<sup>5</sup> An automatic expungement process could also describe a process in which the court issues an expungement order contemporaneously or soon after a defendant is found non-guilty or a case is dismissed.<sup>6</sup>

For states who are members of the Compact, a computer system may assist in identifying expungement-eligible cases, but the final order of expungement cannot be entered without a case specific determination that the record is eligible for expungement.

## **Convictions**

The proponents of H.B. 2226 referenced Pennsylvania as an example of a successful automatic expungement process. However, because Pennsylvania is not a member of the Compact, the Committee searched for Compact member states with automatic expungement processes for convictions that had been reviewed and approved by the FBI's Compact team as complying with the Compact. Both Utah and Michigan are Compact members with automatic expungement processes for convictions.<sup>7</sup> The FBI determined Utah's process complies with the Compact. The FBI has not yet evaluated Michigan's process. Therefore, the Committee chose to focus on Utah's process.

### *Utah Conviction and Diversion Expungement*

Utah has had defendant-initiated petition expungement for at least 10 years.<sup>8</sup> This process is different than Kansas' process, but the results are similar. In 2019, Utah added an automated expungement procedure for select types of cases, including "clean slate eligible cases."<sup>9</sup>

Under the new automatic expungement procedure, using computer software to search Utah's statewide case management system, the Administrative Office of the Utah Courts will provide all prosecuting agencies with a monthly notice of any cases prosecuted by that agency that appear to meet the definition of a clean slate eligible

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<sup>5</sup> Utah Code Ann. §§ 77-40-114, 77-40-115, and 77-40-116.

<sup>6</sup> See e.g. Ken. Rev. Stat. Ann. § 431.076; Neb. Rev. Stat. § 29-3523; N.C. Gen. Stat. § 15A-146; and S.C. Code Ann. § 17-22-950.

<sup>7</sup> See Mich. Comp. Laws § 780.621g and Utah Code Ann. § 77-40-114.

<sup>8</sup> Utah Code Ann. § 77-10-101, *et seq.*

<sup>9</sup> Though the automatic expungement statutes went into effect in 2020, implementation has been delayed due to the COVID-19 pandemic and logistical issues.

case.<sup>10</sup> Within 35 days of receiving the notice, the prosecuting agency must review the case and decide whether to object. If the prosecuting agency objects, the expungement will not move forward. If the prosecuting agency does not object, the court then reviews the case and determines whether the requirements for automatic expungement have been met (i.e. meets the requirements of the definition of a clean slate eligible case). If the requirements are met, the court will issue the expungement order. No hearing is required.

A case is a “clean slate eligible case” if:<sup>11</sup>

1. The case is not one excluded from the definition of clean slate eligible cases;
2. The conviction is a:
  - Misdemeanor conviction for possession of controlled substance; or
  - Class B or C misdemeanor conviction; or
  - Infraction conviction;
3. Defendant’s total number of convictions in Utah state courts don’t exceed these levels:
  - two or more felony convictions other than for drug possession offenses, each of which is contained in a separate criminal episode; or
  - any combination of three or more convictions other than for drug possession offenses that include two class A misdemeanor convictions, each of which is contained in a separate criminal episode; or
  - any combination of four or more convictions other than for drug possession offenses that include three class B misdemeanor convictions, each of which is contained in a separate criminal episode; or
  - five or more convictions other than for drug possession offenses of any degree whether misdemeanor or felony, each of which is contained in a separate criminal episode.<sup>12</sup>
4. No criminal proceeding is pending in Utah; and

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<sup>10</sup> Utah Code Ann. § 77-40-114(4).

<sup>11</sup> Utah Code Ann. § 77-40-102(5)(a).

<sup>12</sup> Utah Code Ann. § 77-40-105(6) & (7).



5. The set time period has passed – time period starts on the day on which the case was adjudicated:
- 5 years for class C misdemeanor or infraction,
  - 6 years for class B misdemeanor, or
  - 7 years for class A conviction for possession of controlled substance.

Clean slate eligible cases include cases that were dismissed after a successful diversion.<sup>13</sup> Clean slate eligible cases do not include:<sup>14</sup>

1. cases where an outstanding debt to the court or restitution has not been paid,
2. cases ineligible for petition expungement,
3. offenses against the person,
4. weapons offense,
5. sexual battery,
6. act of lewdness,
7. driving under the influence,
8. reckless driving,
9. damage or interruption of a communication device,
10. domestic violence, and
11. any Utah felony or class A misdemeanor, except the class A misdemeanor of possession of controlled substance.

Utah has a separate automatic deletion process for traffic offenses. Traffic offenses are automatically deleted without a court order or notice to the prosecuting agency if:

1. the traffic case resulted in an acquittal on all charges; or
2. the traffic case was dismissed with prejudice; or
3. the traffic case is a clean slate eligible case.<sup>15</sup>

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<sup>13</sup> Utah Code Ann. § 77-40-102(5)(b).

<sup>14</sup> Utah Code Ann. § 77-40-102(5)(c).

<sup>15</sup> Utah Code Ann. § 77-40-115(1).

For traffic offenses adjudicated on or after May 1, 2020, the goal is to have qualifying cases deleted within 60 days after the acquittal and 180 days after dismissal with prejudice. For traffic offense cases that meet the definition of a clean slate eligible case, the case is to be deleted upon identification. For cases adjudicated prior to May 1, 2020, the goal is to have the expungement completed within one year of the day on which the case is identified as eligible for automatic expungement.<sup>16</sup>

Utah's process for clean slate eligible cases is not yet up and running. As of November 2021, the Utah Judicial Council (Utah's judicial branch rule making authority) drafted a rule regarding the automatic expungement process. The rule authorizes the Administrative Office of the Courts to develop an automated process for expunging eligible court records in accordance with the Rules of Criminal Procedure and the Utah Expungement Act.

Utah will use computer software to match Utah criminal case records to the associated record holders and have computer software identify cases eligible for automatic expungement. Utah is working with a company, Code for America, to create a matching software and program to identify clean slate eligible cases in Utah's unified case management database. At the time of this report, the development and testing of this software is ongoing.

As shown in Utah, implementation of an efficient computer software program to facilitate identification of cases for expungement is possible, but also takes time, dedicated resources, and a unified case management system. The Kansas Supreme Court is in the middle of establishing a unified case management system for all Kansas district courts. After the transition to the unified case management system is complete, the Committee recommends the feasibility of a case identifying software, such as Utah's, be studied and considered for implementation in Kansas as part of an automatic or clean slate expungement program.

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<sup>16</sup> Utah Code Ann. § 77-40-116(1)(b).

### *Municipal Court Convictions*

Kansas municipal courts are governed by each individual city. While many municipal courts have an electronic case management system, there are many who do not and continue to maintain paper records only. Due to the disunified nature of municipal courts, the Committee was doubtful that a single computer software automatic expungement system could be implemented at the municipal court level.

### **Acquittals & Dismissals**

While a majority of the Committee thought Kansas may not yet be ready for an automatic expungement program for convictions, the Committee readily agreed Kansas should implement expungement of non-conviction records. Non-conviction records include cases in which:

(1) the defendant was acquitted or found not guilty of all charges;

(2) all charges are dismissed with prejudice, meaning the prosecutor cannot refile the same charges against the defendant; and

(3) all charges are dismissed without prejudice, meaning the prosecutor can refile the same charges against the defendant.

Currently Kansas does not have a process for expunging cases in which the defendant was acquitted or the case was dismissed with or without prejudice. The one exception is that Kansas has a process for expunging cases that were dismissed with prejudice due to a successful diversion.<sup>17</sup> Diversions are expunged under the same rules as convictions.

Historically, Kansas has limited expungement to arrests, convictions, and diversions. An employer might request a criminal history report on a potential employee from the Kansas Bureau of Investigation, but that report would not contain cases that were dismissed or cases in which the potential employee was acquitted. The court records for cases that were dismissed or resulted in an acquittal are currently public

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<sup>17</sup> Kan. Stat. Ann. §§ 12-4516 and 21-6614.

record, subject to inspection by the general public. However, to identify and view those records someone would need to be physically present in the courthouse and the person's search would be limited to the cases from that specific jurisdiction. With the advent of the internet and soon, with Kansas' new statewide judicial case management system for district court cases (not municipal court cases), without traveling to a courthouse an employer will be able to do a name search on a potential employee and instantly identify any Kansas district court case in which the potential employee was named as a party, either criminal or civil (with exceptions pursuant to Kansas Supreme Court rule). Even if the potential employee was never found guilty of any charge, seeing that the individual was charged might be enough for an employer to deny employment.

### *Automatic Expungement*

Rather than adding acquittals and dismissals to the existing expungement statutes, the Committee agreed Kansas should have a faster and easier expungement process for non-conviction records. The Committee identified four states that authorize the expungement of acquittals or dismissals at the issuance or very soon after the issuance of the order of acquittal or dismissal.<sup>18</sup> The Committee agreed it would be relatively easy for the court to continue tracking a case for thirty days after the order of acquittal or dismissal and order the expungement of the record at the conclusion of that thirty days unless the defendant objects to the expungement. Based primarily on Kentucky's statute, Ky. Rev. Stat. Ann. 431.076, the Committee created an example statutory draft of how such a process might be implemented in Kansas. The statutory draft with comments begins on page 14. The example statutory draft is written for expungement of district court cases. A separate statute would be necessary to cover municipal court cases.

The statutory draft includes a subsection requiring the court to issue the order expunging the record of a criminal charge and related arrest records 30 days after the court enters an order of acquittal or an order dismissing with or without prejudice all criminal charges in a case unless the defendant objects or an appeal is filed. If an appeal is filled, the court would not issue the expungement order until 30 days after the appellate

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<sup>18</sup> Ky. Rev. Stat. Ann. § 431.076; Neb. Rev. Stat. § 29-3523; N.C. Gen. Stat. § 15A-146; and S.C. Code Ann. § 17-22-950.

court case concluded, and only if the appellate court upheld the dismissal. The process would not require any action by the defendant unless the defendant objects to the expungement.

This automatic expungement should not include traffic infractions not otherwise classified as a misdemeanor or driving under the influence (DUI) diversions because DUI charges have unique diversion and expungement rules. The Committee recommends K.S.A. 12-4516(e) and 21-6614(d) continue to govern the expungement process for DUI diversions.

To avoid creating a strain on the court system, the Committee recommends this automated process only apply to cases prospectively. For cases in which the order of acquittal or dismissal was filed before the statutory implementation date, the defendant in those cases would be eligible to expunge the case through a simplified defendant-initiated petition expungement process. However, if the legislature wants to apply the automated process retroactively, the Committee recommends limiting the retroactivity to five years and providing a flexible timeframe in which the court must evaluate and process those cases. An example of such a provision is included at the end of the example statutory draft on page 21.

#### *Defendant-Initiated Petition Expungement*

Regardless of whether the legislature chooses to implement an automatic expungement process for non-conviction records as discussed above, the Committee recommends the implementation of a more streamlined defendant-initiated petition expungement process for non-conviction and related arrest records, excluding diversions of driving under the influence (DUI) diversions.

Based on Kentucky's statute, Ky. Rev. Stat. Ann. 431.076, the statutory draft on page 14 sets out an example of how such a process might be implemented in Kansas. For acquittals and dismissals with or without prejudice, including diversions, the defendant could petition the court for expungement any time 60 days after the acquittal or dismissal.

After the filing of the petition, the Committee recommends the court notify the prosecutor who will notify any victim or law enforcement agency as required by law. The prosecutor should be given an opportunity to object to the expungement. If the prosecutor objects, the court would set the matter for hearing. If no objection is filed, the court should proceed to issue the expungement after determining the petition was properly brought and the expungement is consistent with public welfare.

The Committee recommends the provisions setting out the procedure for who can access the expunged records, and to whom the defendant must disclose expunged records largely mirror the corresponding provisions in K.S.A. 12-4516 and 21-6614. However, because more cases and related arrest records would be sealed through expungement, the disclosure provisions of the statute need to authorize the release of expunged records to prosecutors for the purpose of potential prosecution and to law enforcement for the purpose of criminal investigation.

The Committee recommends this simplified expungement process not apply to DUI diversions because DUI charges have unique diversion and expungement rules. The Committee recommends K.S.A. 12-4516(e) and 21-6614(d) continue to govern the expungement process for DUI diversions.

If the legislature were to enact a separate automatic expungement and defendant-initiated petition expungement process for non-DUI diversions, amendments to K.S.A. 12-4516 and 21-6614 would also be required to remove non-DUI diversion from the expungement processes under those statutes.

## **CONCLUSION**

While a majority of the Committee thinks Kansas is not ready for an automatic expungement program for convictions, the Committee readily agreed Kansas is ready for automatic and defendant-initiated petition expungement of non-conviction records.

## Example Statutory Draft Regarding Expungement of Acquittals and Dismissals

### Statutory Language

(a)(1)(A) On or after July 1, 2022, notwithstanding the provisions in K.S.A. 21-6614, and amendments thereto, if a court enters an order of acquittal of criminal charges against a person, or enters an order dismissing with or without prejudice all criminal charges in a case against a person, the court shall order the record of the criminal charge and related arrest records expunged upon the expiration of thirty days, unless the person objects to the expungement or an appeal is filed. For a case in which an appeal is filed, if the appellate court issues a mandate affirming the district court's dismissal, the district court shall order the expungement thirty days after a mandate is filed. As used in this section, "criminal charges" shall not include a traffic infraction not otherwise classified as a misdemeanor. The order expunging the records shall not require any action by the person.

(B) This subsection does not apply to diversions of K.S.A. 8-1567, and amendments thereto, or a violation of a city ordinance which would also constitute a violation of K.S.A. 8-1567, and amendments thereto.

(C) Upon a motion establishing good cause and within discretion of the court, the court may set aside the order expunging the record pursuant to this section.

(2)A person who has been charged with a criminal offense and who has been acquitted of the charges, or against whom charges have been dismissed, and whose records have not been expunged pursuant to subsection (a)(1) of

### Comments

*By including the language "notwithstanding the provisions in K.S.A. 21-6614, and amendments thereto" the goal is that this statute govern the expungement of district court diversions after July 1, 2022, not K.S.A. 21-6614.*

*The goal is that K.S.A. 21-6614 & 12-4516 would control for expungement of DUI diversions issued through a petition process.*

*The setting aside of the expungement could be necessary if a defendant later withdraws a plea in a separate case and the dismissal of the now expunged case was conditioned on the plea in the separate case.*

*This would allow diversions to be expunged sooner than K.S.A. 21-6614 currently allows*

this section, may petition the court in which the disposition of the charges was made to expunge all charges and related arrest records.

*diversions to be expunged.*

(A) This subsection does not apply to diversions of K.S.A. 8-1567, and amendments thereto, or a violation of a city ordinance which would also constitute a violation of K.S.A. 8-1567, and amendments thereto.

*The goal is that K.S.A. 21-6614 & 12-4516 would control for expungement of DUI diversions issued through a petition process.*

(b) An expungement petition brought under subsection (a)(2) of this section shall be filed no sooner than sixty days following the order of acquittal or dismissal with or without prejudice by the court;

(c)(1) Following the filing of the petition, the court shall notify the prosecutor of an opportunity to respond to the petition. The response shall be filed within thirty days after the filing of the petition. The prosecutor shall notify the arresting law enforcement agency and any victim as provided by law.

*The prosecutor must provide notice to any victim as required by K.S.A. 74-7335.*

(2) If a response objecting to the expungement is filed, the court shall set the matter for hearing.

(3) If a response objecting to the expungement is not filed, thirty days after the filing of the petition the court shall order the expunging of the records and related arrest records pursuant to subsection (d).

(d) If the court finds that the petition under subsection (a)(2) of this section is properly brought, the court shall grant the petition and order the expunging of the court records and related arrest records if consistent with public welfare.

(e)(1) An order of expungement pursuant to this section shall expunge all criminal records in the custody of the court and any criminal records in the custody of any other agency or official, including law enforcement records.



(2) When the court has issued an order of expungement pursuant to this section, the clerk of the court shall send a certified copy of the order of expungement to the Kansas bureau of investigation that shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency that may have a record of the arrest, acquittal, diversion or dismissal. 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 matter shall be deemed never to have occurred, except that:

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

(B) the petitioner shall disclose that the arrest, acquittal, diversion or dismissal occurred if asked about previous arrests, acquittals, diversions or dismissals:

(i) 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;

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

(iii) 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;

(iv) to aid in determining the petitioner's qualifications for executive director of the Kansas racing and gaming commission, for employment

*This section mirrors the language in KSA 21-6614(i).*

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;

(v) 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;

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

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

(viii) 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;

(ix) 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;

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

(xi) 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 amendments thereto, and K.S.A. 50-6,141, and amendments thereto;

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

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

(E) 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.

(f) If an expungement is ordered under subsection (a)(1) or (2) of this section, an appellate court which issued an opinion in the case shall order the appellate case file to be sealed and also direct that the version of the appellate opinion on the court's website be modified to avoid use of the defendant's name in the case title and body of the opinion.

(g)(1) Subject to the disclosures required pursuant to subsection (e), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest, acquittal, diversion or dismissal of a crime has been expunged under this statute may state that such person has never been arrested, acquitted of such crime, completed diversion or had such crime dismissed.

(2) A person whose arrest, acquittal, or dismissal of a crime that resulted in such person being prohibited by state or federal law from possessing a firearm has been expunged under this statute shall be deemed to have had such person's right to keep and bear arms fully restored. This restoration of rights shall include, but not be limited to, the right to use, transport, receive, purchase, transfer and possess firearms. The provisions of this paragraph shall apply to all orders of expungement, including any orders issued prior to July 1, 2021.

(h) Whenever the record of any arrest, acquittal, diversion or dismissal 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, acquittal, diversion, dismissal 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

*This section mirrors the language in K.S.A. 21-6614(k).*

*This section largely mirrors the language in K.S.A. 21-6614(l).*

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) a prosecutor for the purpose of a potential prosecution; or

(B) 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

*Because many more cases and arrest records would be automatically expunged prosecutors need the authority to access those records for the purpose of a potential prosecution.*

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) a law enforcement agency for the purposes of a criminal investigation; or

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

(B) the attorney general for any other purpose authorized by law, except that an expungement record shall not be the basis for denial of a license to carry a concealed handgun under the personal and family protection act; or

*Because many more cases and arrest records would be automatically expunged law enforcement needs the authority to access those records for the purpose of a criminal investigation.*

(17) the Kansas bureau of investigation, for the purpose of 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.

(i) Except as provided in subsection (a)(1) of this section, this section shall be retroactive.

**Retroactive automatic expungement for acquittals and dismissals-** could be added as subsection (a)(2).

(a)(2) For cases adjudicated on or after July 1, 2017, and before July 1, 2022, reasonable efforts within available funding shall be made to expunge a case as quickly as is practicable with the goal of expunging a case within one year of the day on which the case is identified as eligible for automatic expungement.

*This language is based on Utah statute – Utah Code Ann. § 77-40-116.*

*If the automatic expungement provision is going to be retroactive, the subcommittee suggests that the retroactivity be limited to 5 years.*