

SESSION OF 2017

SUPPLEMENTAL NOTE ON SENATE BILL NO. 136

As Amended by Senate Committee on Judiciary

Brief*

SB 136, as amended, would amend law concerning expungement of arrest records. If a person has been arrested as a result of mistaken identity or as a result of another person using identifying information of the named person and the charge against the named person is dismissed or not prosecuted, the bill would require the prosecuting attorney or other judicial officer who ordered the dismissal or declined to prosecute to provide notice to the court of such action and petition the district court for the expungement of such arrest record. Further, the bill would require the court to order the arrest record and any subsequent court proceedings expunged and purged from all applicable state and federal systems.

The bill would define “mistaken identity” as the erroneous arrest of a person for a crime as a result of misidentification by a witness or law enforcement, confusion on the part of a witness or law enforcement as to the identity of a person who committed the crime, misinformation provided to law enforcement as to the identity of a person who committed the crime, or some other mistake on the part of a witness or law enforcement as to the identity of the person who committed the crime. Further, the bill would exclude from the definition of “mistaken identity” any situation in which an arrestee intentionally provides false information to law enforcement officials in an attempt to conceal such person’s identity.

*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>

The bill would allow any person who may have relevant information about the petitioner to testify at the hearing on such petition and would allow the court to inquire into the background of the petitioner. Such a petition would be required to include the same information required in other petitions for expungement of arrest records.

When a court orders expungement of arrest records as described above, the bill would require the order to state the information required in the petition and the grounds for expungement. Additionally, the bill would require the order to direct the Kansas Bureau of Investigation (KBI) to purge the arrest information from the Criminal Justice Information System central repository and all applicable state and federal databases. The clerk of the court would be required to send a certified copy of the order to the KBI, which would carry out the order and notify the Federal Bureau of Investigation, the Secretary of Corrections, and any other criminal justice agency that may have a record of the arrest. If an order of expungement is entered, the bill would provide that the person eligible for mandatory expungement as described above would be treated as not having been arrested.

Background

The bill was introduced at the request of Senator Haley. In the Senate Committee on Judiciary hearing, Senator Haley and a representative of Fitting the Description appeared in support of the bill. A representative of the KBI provided written-only neutral testimony. Proponents stated that an arrest record can negatively impact a person's ability to get a job or secure a loan, and the bill would provide a swift process to ensure a mistaken arrest does not remain on a person's record.

The Senate Committee adopted an amendment with changes recommended by the KBI to exclude from the definition of "mistaken identity" any situation in which an arrestee intentionally provides false information to law

enforcement officials in an attempt to conceal such person's identity. The amendment would also specify that the arrest record would be expunged and purged from all applicable state and federal systems and would explain the required procedure for such order.

According to the fiscal note prepared by the Division of the Budget on the original bill, the Office of Judicial Administration indicates any fiscal effect resulting from enactment of the bill would be negligible.