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**Testimony to the House Judiciary Committee
In Opposition to HB2226**

February 8, 2021

Our associations oppose HB 2226 as written. On page 7, starting on line 27, it requires an automatic expungement by the convicting court if three or more years have passed since convicted of such offense. It also lists by reference offenses listed in four subsections which the three-year rule would not apply. The three-year rule would not apply to off-grid, SL 1 through 5 nondrug crimes, or SL 1-4 drug crimes. A similar requirement is proposed in section 1 of the bill for municipal court convictions.

Some of the general concerns we have:

- The automatic expungement appears to be retroactive to the beginning of time. If so, who will be charged with the massive task of reviewing all the conviction records that are not expunged going back decades.
- We do not see any opportunity for anyone to oppose the automatic expungement except for those listed in section 2, subsections (c), (d), (e) and (f). The language in subsection (a) of both sections 1 and 2 appear to preempt any hearing by stating “shall be automatically expunged.”
- There does not appear to be any allowance for a court to determine expungement is appropriate with the individual facts relative to public safety concerns. It removes all judicial discretion in the eligible cases.
- It does not appear to allow for repeat convictions to be considered in deciding whether a conviction should be expunged.
- This bill puts the burden on the government to initiate the expungement rather than the convicted offender. The government had nothing to do with the convicted person committing the crime, why should the people of Kansas pay what is probably a high fiscal note for the research and filing of petitions on behalf of the criminal.
- It appears the automatic expungement for one charge could be required, while a case is pending for a new charge of the same crime or other crime or even after a more recent conviction of a new crime. This departs from the current considerations for those factors.

To help understand what crimes would be included in the proposed automatic expungements, we first look at the exclusions from the proposed three-year rule in subsections (c), (d), (e) and (f). Those exemptions appear to be the only provisions in existing law limiting the automatic expungements without further considerations. They include:

- A five-year waiting period for 7 traffic related offenses. (Section 2, subsection (c) pages 8-9)
- A five-year waiting period for DUI 1st offense. (Section 2, subsection (d)(1) page 9)
- A ten-year waiting period for DUI 2nd or subsequent offense. (Section 2, subsection (d)(2) page 9)
- No expungement is allowed for Rape, indecent liberties with a child, criminal sodomy, indecent solicitation of a child, sexual exploitation of a child, internet trading in child pornography, aggravated incest, endangering a child, abuse of a child, capital murder, 1st or 2nd degree murder, manslaughter, sexual batter, or commercial vehicle DUI. (Section 2, subsection (e) pages 9-10)

- An offender required to register under the offender registration act is also excluded. (Section 2, subsection (f) pages 10-11)

All other offenses would be under the mandatory three-year expungement proposal. Here are some examples of those charges subject to the proposed automatic expungement that concern us.

- All severity levels 6 through 10 of the nondrug grid would fall under the proposed mandated expungement, apparently without any exceptions except as noted above. These crimes include:
 - Felony theft, which includes Auto Theft
 - Committing a felony theft of property or services of the value of \$1,500 but less than \$100,000 is a severity level 7 or 9, nonperson felony.
 - Burglary; aggravated burglary:
 - Burglary to a dwelling is a SL7 person felony.
 - Burglary to a non-dwelling is a SL7 on person felony
 - Burglary to a vehicle is a SL9 nonperson felony
 - Identity theft
 - Aggravated assault and aggravated battery
 - Aggravated interference with parental custody
 - Stalking
 - Providing alcohol to a minor for illicit purposes
 - Contributing to a child's misconduct
 - Abandonment of a child
 - Buying, selling or promoting the sale of sexual relations
 - Breach of privacy using a concealed camera
 - Unlawful selling of prescription only drugs
 - Criminal use of explosives
 - Securities offenses
 - Employment security fraud
 - Work Comp fraud
 - Medicaid fraud
- Domestic violence crimes, including domestic battery
This would also apply to the expungement proposals in section 1 applying to municipal courts.
- Unlawful administration of a substance to another without their knowledge
- Endangering a child
- Promoting obscenity

We believe as you examine this list of crimes above you will see some convictions that should be troubling to block access to some employers.

We have only pointed out the obvious crimes. I am sure there are other serious crimes that this applies to. Several jurisdictions have reported increases in burglary and auto theft cases throughout Kansas. The Wichita Police Department is reporting a rise in both categories in 2020 compared to 2019. The Sedgwick County Sheriff's Office has experienced a 7% increase in burglaries in 2020 compared to 2019. Many of these crimes are due to repeat offenders.

We do not oppose expungements as they exist today. And we believe there should be mechanisms in place for indigency considerations for the costs of expungements if none are already in place.

We oppose this bill as written.

Thank you.

Sheriff Jeffrey T. Easter
Legislative Chair for the Kansas Sheriff's Association