



Kansas County & District Attorneys Association

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To: Hon. Fred Patton, Chair, House Judiciary
From: Brandon L. Jones, Franklin County Attorney/KCDAA Past-President
Darrin Devinney, Butler County Attorney/KCDAA President
Date: February 4, 2022

Re: Testimony in Opposition of HB 2575

Hon. Chairman Patton and members of the House Judiciary Committee:

Thank you for the opportunity to provide testimony in opposition of HB 2575. This testimony is presented on behalf of the Kansas County and District Attorneys Association (KCDAA).

HB 2575 that is before you today would amend K.S.A. 21-6614 to create automatic expungement of court records and related arrest records 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 proposed legislation says this shall occur 30 days after the acquittal or dismissal. The KCDAA is adamantly opposed to legislation which creates automatic expungements of thousands of offenses annually instead of leaving the burden on the defendant to petition the Court and prove they have moved away from their prior behavior.

The current system is not unreasonable or overly burdensome on the defendant. It simply requires them to fill-out some paperwork and submit it to the court. The State then has a chance to be certain the defendant's case(s) was dismissed due to actual innocence and not as part of a global plea bargain in which they were convicted of an equal or more serious offense, or that this is not a case that is going to be re-filed, before agreeing to the expungement. The KCDAA would not oppose waiver of filing fees or even suggestions to make this process easier on defendants, but we oppose this being an automatic right in the current form proposed in this bill.

HB 2575 continues to place a burden on the district and county attorney's offices across the state by requiring them to notify law enforcement agencies and victims in cases in which an automatic expungement does not occur and a petition is filed by the defendant. It is the KCDAA position that any additional workload created by such a measure should still be borne by the petitioning party and not by our members across the state that are already underfunded, understaffed, and overburdened.

It is not at all uncommon for the State to have need to file multiple criminal cases against a single defendant in a relatively short time. These multiple cases often result in "global plea agreements" in which some cases are dismissed in return for pleas to other cases. In these situations, a defendant may be convicted of a rape or burglary or other serious offenses, and in return, other such serious cases may be dismissed. These other cases are not dismissed because the defendant is innocent or they are bad cases, rather they are dismissed as part of the "global plea agreement." In these situations, KCDAA does not believe that an automatic expungement of the records in those dismissed cases would be appropriate.

The State may also be forced to dismiss a case *without prejudice* due to the unavailability of a witness or while awaiting the results of forensic examination of evidence such as DNA, cell phone dump, etc. In these cases, the State often has every intention of re-filing the criminal case once the witnesses are available or the evidence is fully analyzed and processed. In these situations, the 30-day automatic expungement of the case can cause many issues for the subsequent re-filing and prosecution of that case.

The KCDAAs appreciate that unlike HB 2226 from last year, this bill does not put the onus on the state prosecutor offices to file the expungement paperwork, and that it only targets those cases in which the person is acquitted, or the case is dismissed.

Our membership is in full support of those persons who are arrested and/or charged with criminal cases and later acquitted, or whom have their cases dismissed due to their innocence, being able to have those records expunged so they do not create issues for them in the future.

While we believe that the intent behind this legislation is good and well-meaning, there are still issues that need to be resolved before we can support it. HB 2575 does not consider some very common occurrences that our members experience during the course of criminal prosecutions that prevents the KCDAAs from supporting automatic expungement of all records after 30 days.

We would relish the opportunity to be at the table when this type of legislation is being discussed to provide our input upfront to help craft effective legislation that we can support.

Thank you for the opportunity to appear and testify in opposition of HB 2575. We respectfully request that the committee report HB 2575 unfavorably for passage. I am available for questions at the appropriate time.