

SESSION OF 2022

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2575
As Amended by House Committee on Judiciary

Brief*

HB 2575, as amended, would create and amend law regarding expungement, including providing for automatic expungement of criminal charges and arrest records in certain circumstances.

The bill would require, on and after July 1, 2022, 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 to 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;
- An appeal is filed; or
- The prosecutor files a written objection to the expungement.

If an appeal is filed and results in a mandate affirming the district court's dismissal, the district court would be required to order the records expunged 30 days after the mandate is filed.

If the prosecutor files a written objection to the expungement, the bill would require the court to promptly hold a hearing on such objection. If the court finds expungement is appropriate, the court would be required to order the records expunged 30 days after such hearing. If the court finds

*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>

expungement is not appropriate, the bill would prohibit the court from ordering the records expunged.

The bill would specify that an order expunging records under the above provisions would not require any action by the person.

The bill would provide that a person who has been charged with a criminal offense and who has been acquitted of such charges or against whom charges have been dismissed, whose records have not been expunged under the above provisions, may petition the court in which the disposition of charges was made to expunge all charges and related arrest records. The bill would require such petition be filed not sooner than 60 days after the order of acquittal or dismissal is entered by the court. After the filing of such petition, the court would be required to notify the prosecutor, who would have the opportunity to respond within 30 days after the filing of the petition. The prosecutor would be required to notify the arresting law enforcement agency of the petition. If a response objecting to the expungement is filed, the court would be required to set the matter for hearing, and the prosecutor would be required to notify any victim of the hearing. If a response objecting to the expungement is not filed, the court would be required to order expungement of the records 30 days after the filing of the petition. If the court finds that a petition is properly filed, the court would be required to grant the petition and order the court records and related arrest records expunged if such order is consistent with the public welfare.

The bill would provide that the expungement procedures established by the bill would not apply to diversions for a violation of driving under the influence under state law, city ordinance, or county resolution.

The bill would provide that an order of expungement under its provisions would 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, related to the charges described in such order. The bill would specify procedures by which various agencies and entities who might have related records would be notified of the expungement.

The bill would provide that, after the order of expungement is entered, the petitioner would be treated as not having been arrested, charged, acquitted, dismissed, or diverted of the crime, except that 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, and the petitioner would be required to disclose that the arrest, acquittal, dismissal, or diversion occurred if asked about previous arrests, convictions, or diversions in certain applications for licensure, registration, or employment as specified in the bill.

The bill would also permit the court, in the order of expungement, to specify other circumstances under which the conviction is to be disclosed. The diversion could be disclosed in a subsequent prosecution for an offense that requires as an element of such offense a prior conviction of the type expunged. Upon commitment to the custody of the Secretary of Corrections, any previously expunged record in the possession of the Secretary could be reinstated and the expungement disregarded, and the records continued for the purposes of the new commitment.

Upon a motion establishing good cause, the court could set aside the order expunging a record under the bill's provisions.

Subject to the disclosures required by the bill, in any application for employment, license, or other civil right or privilege, or any appearance as a witness, a person whose records have been expunged under the bill's provisions may state that such person has never been arrested, charged, acquitted, dismissed, or diverted of the crime.

The bill would outline the full restoration of a person's right to keep and bear arms if disqualifying records are expunged under the bill's provisions.

Whenever the records of arrest, acquittal, dismissal, conviction, or diversion related to a criminal charge have been expunged under the bill's provisions or under the provisions of any other existing or former statute, the bill would prohibit the custodian of such records from disclosing the existence of such records, except when requested by:

- The person whose record was expunged;
- Entities or persons in connection with an application for certain licensure, registration, certification, or employment, as specified by the bill;
- A court, upon a showing of a subsequent conviction of the person whose record has been expunged;
- A person entitled to such information pursuant to the terms of the expungement order;
- A prosecutor, for the purpose of a potential prosecution;
- The Kansas Sentencing Commission;
- A law enforcement agency, for the purposes of a criminal investigation;
- The Attorney General, for any other purpose authorized by law, except an expungement records shall not be the basis for denial of a license to carry a concealed handgun; or
- The Kansas Bureau of Investigation (KBI), for the purpose of completing a person's criminal history record information within the central repository.

The bill would state that, for purposes of the bill's provisions, the term "criminal charges" would not include a traffic infraction not classified as a misdemeanor.

The bill would state that the new section created by the bill, except for the automatic expungement procedure, would be construed and applied retroactively.

The bill would amend the existing Kansas Criminal Code statute governing expungement to remove provisions regarding diversion, which would be replaced by the new procedures created by the bill.

Background

The bill was introduced by the House Committee on Judiciary at the request of Representative Curtis.

House Committee on Judiciary

In the House Committee hearing on February 7, 2022, the Wyandotte County District Attorney, the Mayor Pro Tem of the City of Leavenworth, and representatives of ACLU of Kansas, the Greater Kansas City Chamber of Commerce, Kansas Legal Services, and Stewart Law Office testified as **proponents** of the bill, stating it would help reduce barriers to expungement, which would help individuals in endeavors such as acquiring housing and employment and productively participating in society. Representatives of Grissom Miller Law Firm, Healthy Community Wyandotte, Kansas Appleseed Center for Law and Justice, Kansas Coalition Against Sexual and Domestic Violence, Kansas Interfaith Action, Overland Park Chamber of Commerce, the Unified Government of Wyandotte County/Kansas City, Kansas, and Wichita Regional Chamber of Commerce provided written-only proponent testimony.

A representative of the Judicial Branch presented neutral testimony requesting amendments clarifying the agency notification procedure created by the bill and preventing the potential for multiple versions of appellate decisions to be published.

A representative of the Kansas Judicial Council provided written-only neutral testimony.

A representative of the Kansas County and District Attorneys Association (KCDAA) provided **opponent** testimony, stating various concerns with creating an automatic expungement process.

On February 17, 2022, the House Committee amended the bill to:

- Clarify the agency notification procedure (requested by the Judicial Branch);
- Remove a provision sealing the appellate case file and requiring the appellate opinion be modified (requested by the Judicial Branch); and
- Allow a prosecutor to file a written objection to an automatic expungement and have such objection considered by the court (addressing some concerns raised by KCDAA).

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the KBI states enactment of the bill would require \$341,880 from the State General Fund (SGF) in FY 2023 to hire an additional 8.0 FTE positions to process expungements and \$12,750 from the SGF in FY 2023 for one-time programming costs for modifications to the criminal history database.

The Office of Judicial Administration (OJA) states enactment of the bill could result in more time spent by court personnel processing and deciding cases. To track cases in which charges are dismissed or the defendant is acquitted, court clerks would have to perform this tracking manually or the centralized case management system would need to be reprogrammed, resulting in additional expenditures.

The appellate court provisions in the bill would add responsibilities for Judicial Branch employees. [*Note:* These provisions were removed by the House Committee.] The OJA estimates enactment of the bill could result in the collection of docket fees in petitions filed under the bill's provisions. However, a fiscal effect cannot be estimated.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2023 Governor's Budget Report*.

The Kansas Association of Counties states enactment of the bill could increase labor costs for conducting automatic records expungements and the exact costs would vary depending on how frequently individuals are acquitted or cases are dismissed, and how many personnel are needed to meet the demand.

Expungement; automatic; acquittal; dismissal