



SUPPORT TESTIMONY RE SB 105 – Prohibiting denial of a petition for expungement due to the petitioner's inability to pay outstanding costs, fees, fines or restitution.

Testimony of Kendall Seal, Director of Advocacy, American Civil Liberties Union of Kansas

House Judiciary Committee – February 10, 2021

Chairwoman Warren and Members of this Committee,

Thank you for the opportunity to present testimony today. My name is Kendall Seal, and I am the Director of Advocacy for the ACLU of Kansas. We are a nonpartisan, non-profit organization that works to preserve and strengthen the constitutional liberties of all Kansans. We support SB 105 as a more equitable approach for Kansans without financial means.

First, this bill is a positive step forward because it allows a person's sentence to be deemed completed and eligible for expungement regardless if the person still owes fines, fees, or restitution. This is commendable, as fines, fees, and restitution are major barriers to people qualifying for expungement.

Next, this bill requires the court to prohibit the denial of expungement for inability to pay, which is a meaningful reform. But this bill leaves open the possibility for expungement to be denied because of a person's "unwillingness to pay." This may seem like an equitable position, but in reality, the inability-to-pay determinations are frequently based on faulty criteria and outdated economic indicators, which are laden with implicit and sometimes overt bias. In many cases, inability-to-pay determinations are based on no criteria at all; they reflect the bias of individual judges or courts rather than fair, objective standards. Simply put, inability-to-pay determinations can lead to the continued systemic and structural racism in the criminal legal system and the re-entry process. Also, this loophole will disproportionately deny low-income Kansans the ability to reap the benefits of having their record expunged.

Finally, we recommend the removal of all docket and application fees associated with expungement, as these fees pose an inequitable barrier to relief.

The ACLU of Kansas urges this Committee to pass SB 105 if amended to eliminate the "unwillingness to pay" language and remove all docket and application fees associated with expungement.