



To: Senate Judiciary Committee

From: Michelle Y. Ewert, Washburn Law Clinic

Date: February 9, 2021

Re: Support for 2021 SB 105 Prohibiting Denial of Expungement Due to the Petitioner's Inability to Pay Outstanding Costs, Fees, Fines, or Restitution

I write this honorable committee to express my support for 2021 SB 105. I am currently an Associate Professor of Law at the Washburn University School of Law, where I supervise students in the Washburn Law Clinic. My students and I provide free legal services to low-income Kansans who would not otherwise have access to counsel. I previously served as staff attorney and housing law supervisor at the Homeless Persons Representation Project in Baltimore, Maryland, and as staff attorney for HOPE Fair Housing Center in Wheaton, Illinois. I have also worked as an attorney with Central California Legal Services in Visalia, California. In each of these positions, I represented low-income individuals and families that were struggling to overcome very significant barriers to moving out of poverty.

It is well-documented that a criminal record makes it difficult to secure housing and stable employment.¹ In 2011, former HUD Secretary Shaun Donovan issued a letter to public housing authorities explaining the importance of providing “second chances” to formerly incarcerated individuals and urging housing providers to make housing more accessible to people with criminal records.² He wrote that “people who have paid their debt to society deserve the opportunity to become productive citizens and caring parents, to set the past aside and embrace the future.”³ This bill would make it easier for low-income Kansans to do just that.

Kansas law allows the expungement of arrest records⁴ and criminal convictions.⁵ For a conviction to be eligible for expungement, the petitioner must show that the requisite waiting period has passed since they satisfied their sentence, the “circumstances and behavior of the

¹ Helping Moms, Dads & Kids to Come Home: Eliminating Barriers to Housing for People with Criminal Records, Legal Action Center (December 2016), available at https://www.lac.org/assets/files/LAC_Helping_Moms_Dads_and_to_Kids_Come_Home-Eliminating_Barriers_to_Housing_For_People_With_Criminal_Records.pdf; Stephen Metraux, Caterina G. Roman, and Richard S. Cho, “Incarceration and Homelessness,” in *Toward Understanding Homelessness: The 2007 National Symposium on Homelessness Research #9* (2007), available at <https://www.huduser.gov/portal/publications/pdf/p9.pdf>.

² Letter from Sec. Shaun Donovan, U.S. Dept. of Hous. and Urb. Dev. (June 17, 2011), available at https://www.usich.gov/resources/uploads/asset_library/Rentry_letter_from_Donovan_to_PHAs_6-17-11.pdf.

³ Id.

⁴ K.S.A. 12-4516a; K.S.A. 22-2410.

⁵ K.S.A. 12-4516; K.S.A. 21-6614.

petitioner warrant the expungement,” and “the expungement is consistent with the public welfare.”⁶ Currently, courts interpret outstanding fines, fees and restitution to be part of a sentence,⁷ which must be satisfied before a person may petition for expungement.⁸ Because low-income individuals often lack the resources to pay fines, fees and restitution, the very people who would most benefit from expungement are often the least able to access it.

Each year the Washburn Law Clinic represents clients who are making efforts to improve their lives and be contributing members of society—they volunteer in the community, take on leadership positions at church, pursue their education, participate in treatment programs, and engage with their families. Their behavior and circumstances show the significant changes they have made since they were charged and convicted and that expungement would be consistent with the public welfare, yet these indigent people cannot expunge some of their otherwise eligible records because of unpaid fines. Sometimes these cases date back twenty or thirty years.

This bill makes explicit that inability to pay fees because of poverty is not a proper basis for denying an expungement. It does not apply if a person has the ability to pay fines, fees and restitution but is simply unwilling to do so. Further, the bill provides mechanisms for the collection of fees following expungement. This bill makes expungement more accessible but still protects the interests of the state and those to whom restitution is owed.

People who have served their time and shown a commitment to improving their lives should have the opportunity to expunge their records. We all benefit when people are able to obtain better employment and housing and be more self-sufficient. I urge the passage of 2021 SB 105.

The ideas expressed in this statement are mine as an individual faculty member at the law school and do not represent Washburn University or Washburn University School of Law.

⁶ Id.

⁷ State v. Hall, 298 Kan. 978, 983 (2014).

⁸ K.S.A. 21-6614(a)-(c).