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To: Hon. Stephen Owens, Chair, House Corrections and Juvenile Justice Committee
From: Todd Thompson, Leavenworth County Attorney and Former KCDAAs President
Date: January 19, 2023

Re: Opposition Testimony to House Bill 2113

Hon. Chairman Owens and members of the House Corrections and Juvenile Justice Committee:

Thank you for the opportunity to testify and provide written testimony regarding HB 2028. My name is Todd Thompson, and I am the Legislative Chair and former President of the Kansas County and District Attorney's Association. Today, I am speaking and writing on behalf of the Kansas County and District Attorneys Association (KCDAAs) as a Former President of that organization.

In 2003, Anthony Devine was convicted of lewd and lascivious behavior. This means he publicly exposed a sex organ to some unwanted person. Due to this the Court ruled that he needed to register as a sex offender for ten years. Three years after finishing his probation he filed to have his case expunged. It was granted. After his expungement was granted, Mr. Devine challenged that he should not still be registering as a sex offender. And in 2011, our Kansas Supreme Court ruled that due to the expungement statute state under K.S.A. 2010 Supp. 21-4619(f), "[a]fter the order of expungement is entered, the petitioner shall be treated as not having been arrested, convicted or diverted of the crime." The Supreme Court ruled that since his conviction was expunged, so therefore he did not have to register. (See State v. Devine, 291 Kan. 738 (2011)). Mr. Devine successfully cut short a responsibility he had to the public and an order of the court on a technicality. Others followed suit and were able to get out of registering.

Now we look at this new piece of legislation asking you to start the time for expungement at the time of conviction. Could this same result happen in these cases? These are people who are ordered to serve multiple years in prison for heinous batteries, robberies, assaults, burglaries, etc., that could be let free only after serving a short time in prison. If the expungement is to act as if the crime did not occur, then nothing would stop a person ordered to serve 20 years to be free in three years.

Further, to begin the expungement process at the time of conviction gives no proof to society the person has reformed. Most sentences that are probation last a year to two years. These probations are ones that are supervised by someone else. They regularly monitor their activities, whether that be mental health responsibilities or dependency of substances. When a person is free from probation is when the clock starts for expungements. At this point is when the person who has violated the law proves to the court, the prosecutor, their family, and mainly themselves they have learned from their mistakes, and they can do this without the help of anyone constantly monitoring them. This statute would wreck that. It could possibly allow for people to expunge their case sometimes before they are done being supervised. We have cases where defendants abscond from court for years avoiding punishment, and this would allow for them to file an expungement and never pay the consequences for their actions. This bill could end up causing far more harm to the community and the person than any benefit.

As a past-president of the KCDA and the County Attorney of Leavenworth I appreciate and support defendants receiving expungements when no conviction occurred to help them move on with their lives and not continually be affected by their criminal history. This has been evident with multiple counties throughout our State, including mine, hosting Expungement events. The KCDA is committed to and 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. The issue we have is that in expunging records we never want to forget about who has been victimized. The people who have been hurt and lost money, either due to medical bills or items being stolen or broken, would continue to be hurt by this bill. They will lose their opportunity to collect the money they owe through criminal restitution. Expungements should be a reward for those who have moved passed the harm they once caused, but still owing someone is still harming them. Far too often in the rush to help those convicted succeed, we forget about those who they hurt. We cannot keep letting them down.

Finally, we understand that many who are eligible for expungement cannot afford the opportunity. As I said above, many of us around the State are attempting to help with expungement events. We understand that expungements help people achieve higher salaries, better opportunities for education, and housing. That will be up to you to decide if the State wants to waive the costs the Courts have ordered. If you are not aware, court costs and fines can be paid off through community service statutorily (and prosecutors have advocated for changing that statute from 5 dollars an hour for community service to minimum wage, it did not pass). People attempting to file expungements can file poverty affidavits to have these costs waived too.

Respectfully submitted,

Todd Thompson

Leavenworth County Attorney

Legislative Chair and Former President, Kansas County and District Attorneys Association