

Approved by the Judicial Council December 3, 2010

**REPORT OF JUDICIAL COUNCIL JUVENILE OFFENDER/
CHILD IN NEED OF CARE ADVISORY COMMITTEE
ON 2010 HOUSE BILL 2603**

(December 3, 2010)

In May, 2010, House Committee on Corrections and Juvenile Justice Chair, Pat Colloton, requested that the Judicial Council study and make a recommendation on 2010 HB 2603. Current law allows for the expungement of certain juvenile records or files by application to the court where the records or files are maintained. 2010 HB 2603 would allow the expungement of juvenile records and files to be automatic under certain conditions. In its June, 2010, meeting, the Judicial Council agreed to undertake the study and assigned the task to the Juvenile Offender / Child in Need of Care (JO/CINC) Advisory Committee.

COMMITTEE MEMBERS

Honorable Jean F. Shepherd, Chair, Lawrence. Judge Shepherd is a district judge, a member of the Judicial Council and handles family court matters in Douglas County.

Wade H. Bowie, Jr., Topeka. Mr. Bowie is an assistant district attorney in Douglas County who works exclusively in the juvenile area.

Charlene Brubaker, Hays. Ms. Brubaker is an assistant county attorney in Ellis County who works exclusively in child in need of care and juvenile offender matters.

Kathryn Carter, Concordia. Ms. Carter is a practicing attorney and former district magistrate judge.

Honorable Timothy H. Henderson, Wichita. Judge Henderson is a district judge in Sedgwick County.

Donald W. Hymer, Olathe. Mr. Hymer is an assistant district attorney in Johnson County.

Honorable Jeffrey L. Jack, Parsons. Judge Jack is a district judge in Labette County.

Professor Richard E. Levy, Lawrence. Professor Levy is a professor at the University of Kansas School of Law.

Rachel Y. Marsh, Halstead. Ms. Marsh is an attorney with Saint Francis Community Services, a contract provider for family preservation, reintegration, and adoption services with the Kansas Department of Social and Rehabilitation Services.

Roberta Sue McKenna, Topeka. Mrs. McKenna is Assistant Director of Children and Family Services of the Kansas Department of Social and Rehabilitation Services responsible for legal services including liaison with the judicial branch and coordination with the legislature.

Lisa Mendoza, Topeka. Ms. Mendoza is chief counsel for the Kansas Juvenile Justice Authority.

Jayne Morris-Hardeman, Manhattan. Ms. Morris-Hardeman serves as the Executive Director of Sunflower CASA Project, Inc., which provides core CASA, Child Exchange and Visitation Center, and Child Advocacy Center services to Riley, Clay, and Pottawatomie Counties.

Senator Thomas C. (Tim) Owens, Overland Park. Senator Owens is an attorney, a state senator and is the chair of the Senate Judiciary Committee.

Representative Janice L. Pauls, Hutchinson. Representative Pauls is an attorney, a state representative and is the ranking minority member of the House Judiciary Committee.

Honorable Steven M. Roth, Westmoreland. Judge Roth is an attorney and is a district magistrate judge in Pottawatomie County.

DISCUSSION

The JO/CINC committee considered HB 2603 at its June and August, 2010 meetings. The committee reviewed and discussed the bill and information on the public policy behind the bill as provided by Rep. McCray-Miller. In addition, the committee reviewed the Kansas Division of Budget's fiscal note on the bill.

2010 HB 2603 would allow automatic expungement if the following conditions are met:

- The individual is 18 years of age or older;

- The individual's criminal history consists of no more than one conviction or adjudication;
- The individual has not been convicted or adjudicated of a violation in subsection (b) of K.S.A. 38-2312;
- Two years have passed since the disposition of the previous conviction or adjudication;
- The individual has not been convicted of a felony or of a misdemeanor other than a traffic offense or adjudicated as a juvenile offender under the revised Kansas Juvenile Justice Code;
- There are no proceedings pending against the individual seeking a conviction or adjudication; and,
- The circumstances and behavior of the individual warrant expungement.

The court's administrative office would be required to provide a report to the juvenile courts identifying individuals whose records may be eligible for expungement. The juvenile court would then verify that each individual meets the criteria above and upon verification, the juvenile court would send an order of expungement to every public officer and agency in the county having possession of any records.

Currently the Revised Kansas Juvenile Offender Code provides that, except for the most serious offenses, records or files specified in the code concerning a juvenile may be expunged upon application to a judge of the court of the county in which the records or files are maintained. The application may be made by the juvenile, if 18 years of age or older, or by the juvenile's parent or next friend if the juvenile is less than 18 years of age. K.S.A. 38-2312. In addition, the Kansas Judicial Council provides approved forms for use by those seeking expungement of juvenile records on its website.

The committee first discussed the process for determining eligibility for the automatic expungement and then the applicable criteria. The committee is concerned that there are problems with the practical aspects of implementing such a procedure. First, the proposed

legislation requires the administrative office of the courts to provide a report to the juvenile courts listing those juveniles whose records may be eligible for expungement. This likely requires significant research and thus poses time, cost and staffing problems. The fiscal note on the bill indicates that the Office of Judicial Administration expects that passage of the bill would require an additional 20 court service officer positions to perform necessary interviews and research and an increase in operating expenditures resulting in an estimated \$1.5 million dollar expenditure from the State General Fund. The committee thinks that in light of the fiscal note, the proposed legislation is likely cost prohibitive.

Second, even if the administrative office could supply the required eligibility report to the courts, the courts would then be responsible for determining whether each individual met the criteria for expungement based solely on the report. This too is problematic. Although the first few criteria could possibly be determined by looking at a thorough report of the juvenile's record, the last criterion requires that the court find that the juvenile's circumstances and behavior warrant the expungement. It is unlikely that a court would be comfortable making a judgment on the individual's circumstances and behavior without at least having a hearing.

Finally, if the policy behind the bill is to assist more individuals, with expungeable juvenile records, to remove the blemish from their past in order to provide them with a clean slate for the future and avoid the negative consequences, then that process is already available through the current expungement statutes. The Kansas Judicial Council provides the necessary forms, free of charge, on its website and the courts are generally available to hold the brief hearing required to grant the expungement. The committee agreed that it would be more beneficial to these individuals to provide additional educational materials at relevant times in the

adjudication process so that the individuals become more aware of the potential for expungement.

The committee briefly discussed the possibility of developing legislation that would allow decay of a juvenile's record under certain circumstances and criteria. However, the committee quickly recognized that such a process would still require someone to track and follow-up with the juvenile to determine whether the record should decay, thus causing the same time, cost and staffing problems. Although some additional possibilities were discussed, such as instituting a notification process wherein the offender would only be notified that his or her record was eligible for expungement leaving the responsibility for doing so with the individual, the committee ultimately agreed that additional expungement processes were too costly and unnecessary. The committee agreed that providing more information and education to individuals involved in the judicial system would likely be more beneficial and less costly.

CONCLUSION

As the discussion concluded, the committee members agreed that they would recommend against passage of House Bill 2603 or similar legislation for the following reasons:

- The procedure required to enable automatic expungement as provided in the bill is cost prohibitive;
- Requiring the court to take a report on a juvenile's eligibility for automatic expungement as the basis on which to make a judgment on whether all the criteria have been met in order to grant the expungement goes against general judicial policy and procedure;

- Kansas Statutes already provide a procedure for expunging juvenile records and the required forms are already available free of charge on the Kansas Judicial Council's website; and,
- Providing more education and information to individuals throughout the adjudication process could likely increase the number of individuals taking advantage of the expungement process and would also be much less costly and problematic.

The committee is aware that the public policy behind expungement of records is to provide eligible individuals with a "clean-slate" on which to base their future. The goal of the expungement is to help the individual avoid many of the negative consequences that can result from having an arrest, adjudication or conviction record such as; denials of financial assistance for college, difficulty gaining employment, exclusion from joining the military and even difficulty obtaining or maintaining public housing. However, the committee also is aware that expungements of records, as allowed by current statutes, are not really expungements at all.

K.S.A. 38-2312 (expungement of juvenile records) provides that an expunged juvenile record may still be released in at least 8 instances including for employment screening purposes in certain agencies, for criminal history or sentencing purposes and for any other purpose the court allows in the expungement order. Both K.S.A. 22-2410 (expungement of arrest record) and 12-4516a (expungement of city ordinance violations) allow expunged records to be used in similar circumstances. In addition, K.S.A. 12-4516 and 21-4619 (expungement of certain convictions, arrest records and diversions) each allow expunged conviction, arrest and diversion records to be provided in at least 14 circumstances.

The committee agreed that rather than develop additional legislation on expungement of

records, it may be more beneficial to those individuals involved, especially those with juvenile indiscretions, if the expungements worked as true expungements. Eliminating some, if not all, of those situations wherein an expunged record can raise its ugly head would go a lot further towards providing deserving individuals with a truly “clean-slate” than would creating additional difficult and costly expungement processes.