

To: Kansas Judicial Council
From: Tawnya Johnson, Staff Attorney
Date: December 5, 2014
Re: Municipal Court Manual Committee Report

While editing the 2013 version of the Municipal Court Manual, the Municipal Court Manual Committee discovered a flaw with the current expungement system. The Committee determined that cases that are appealed from municipal court to district court require two separate expungement processes. Citizens must have their cases expunged through the district court and municipal court, because there is no communication back to the municipal court after an expungement in district court. In 2013, the Committee recommended that the Judicial Council introduce legislation that would require communication between courts. In response, the Judicial Council gave the Committee four areas to explore. The Committee has examined these areas, and recommends that the Judicial Council introduce the enclosed legislation during the 2015 legislative session.

Areas of Exploration

First, the Judicial Council believed that notice to the municipal court is insufficient, because some judges may not know to expunge the case. Thus, the Judicial Council said the municipal court should be directed to expunge the case after receiving notice. The Committee agreed with the Judicial Council's suggestion. The Committee added the sentence, "the municipal court shall order the case expunged once the certified copy of the order of expungement is received" to the Committee's legislative proposal.

Second, the Judicial Council suggested that the Committee contact district courts to make sure that they could manage the new responsibilities under the proposed legislation. As a result, the Committee polled some of the larger districts to get a sense of the potential workload. (The Municipal Court Manual Committee has members who are judges from small and mid-sized districts who believe that the number of cases appealed would be less than in the larger districts polled). Shawnee County District Court, Johnson County District Court, and Wyandotte County District Court all tracked the number of appeals from municipal court to district court. Annual totals ranged from 27 to 71 appeals per year. The Committee also asked if sending expungement orders and notifying municipal courts of dismissals, convictions, and acquittals would burden the larger district courts. Sedgwick County District Court, Johnson County District Court, and Wyandotte County District Court reported that the proposed responsibilities should be very manageable. Shawnee County District Court said that they already send expungement orders and notify municipal courts of dismissals, convictions, and acquittals. According to Shawnee

County, the aforementioned responsibilities are not unduly burdensome. The Committee believes that Shawnee County's response coupled with the projections from other courts indicate that the proposed legislation would be manageable for district courts.

Third, the Judicial Council requested details explaining how receiving notice of a dismissal, conviction, or acquittal would impact the funding that municipal courts receive. Municipal courts cannot collect fines unless they know about the conviction. Committee members had experiences where the district court failed to send the fine to their municipal court, even though the fines should go to the municipal court after an appeal. Hence, if municipal courts were notified of convictions then they would be able to pursue fines.

Finally, Judicial Council members questioned why there was still a record at the municipal court after an appeal, thereby creating a need for two separate expungement processes. The Committee's response is that the municipal court would always keep a record, because municipal courts need to keep records for practical purposes. For example, records are needed for collecting fines and supervising probation. Thus, if the district court expunges a record then the municipal court needs to be notified so that the record can be expunged at the municipal court level.

Legislative Proposal

K.S.A. 12-4516 Expungement of certain convictions, arrest records and diversion agreements

... (i) When the court has ordered an arrest record, conviction or diversion expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest, conviction or diversion. If the case was appealed from municipal court, the clerk of the district court shall send a certified copy of the order of expungement to the municipal court. The municipal court shall order the case expunged once the certified copy of the order of expungement is received...

K.S.A. 22-3609 Appeals from municipal courts

...(1) The defendant shall have the right to appeal to the district court of the county from any judgment of a municipal court which adjudges the defendant guilty of a violation of the ordinances of any municipality of Kansas or any findings of contempt. The appeal shall be assigned by the chief judge to a district judge. The appeal shall stay all further proceedings upon the judgment appealed from. (2) An appeal to the district court shall be taken by filing, in the district court of the county in which the municipal court is located, a notice of appeal and any appearance bond required by the municipal court. Municipal court clerks are hereby authorized to accept notices of appeal and appearance bonds under this subsection and shall forward such notices and bonds to the district court. No appeal shall be filed until after the sentence has been imposed. No appeal shall be taken more than 14 days after the date the sentence is imposed. (3) The notice of appeal shall designate the judgment or part of the judgment appealed from. The defendant shall cause notice of the appeal to be served upon the city attorney prosecuting the case. The judge whose judgment is appealed from or the clerk of the court, if there is one, shall certify the complaint and warrant to the district court of the county, but failure to do so shall not affect the validity of the appeal. (4) Except as provided herein, the trial of municipal appeal cases shall be to the court unless a jury trial is requested in writing by the defendant not later than seven days after first notice of trial assignment is given to the defendant or such defendant's counsel. The time requirement provided in this subsection regarding when a jury trial shall be requested may be

waived in the discretion of the court upon a finding that imposing such time requirement would cause undue hardship or prejudice to the defendant. A jury in a municipal appeal case shall consist of six members. All appeals taken by a defendant from a municipal judge in contempt findings, cigarette or tobacco infraction or traffic infraction cases shall be tried by the court.

(5) Notwithstanding the other provisions of this section, appeal from a conviction rendered pursuant to subsection (b) of K.S.A. 12-4416, and amendments thereto, shall be conducted only on the record of the stipulation of facts relating to the complaint.

(6) At the conclusion of the case, the district court shall send notice of dismissal, conviction, or acquittal to the municipal court clerk.

The Committee believes that the new delegation of duties should be included in the district court statutes as well as to the statutes that traditionally apply when municipal courts are involved.

21-6614. Expungement of certain convictions, arrest records and diversion agreements

... (1) Whenever the record of any arrest, conviction or diversion has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction, diversion and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

(1) The person whose record was expunged;

(2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary for aging and disability services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department for aging and disability services of any person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) a prosecutor, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;

(7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;

(8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(9) the governor or the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission;

(10) the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications of the following under the Kansas expanded lottery act: (A) Lottery gaming facility managers and prospective managers, racetrack gaming facility managers and prospective managers, licensees and certificate holders; and (B) their officers, directors, employees, owners, agents and contractors;

(11) the Kansas sentencing commission;

(12) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications: (A) To be an employee of the state gaming agency; or (B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-gaming compact;

(13) the Kansas securities commissioner or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged;

(14) the Kansas commission on peace officers' standards and training and the request is accompanied by a statement that the request is being made to aid in determining certification eligibility as a law enforcement officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto;

(15) a law enforcement agency and the request is accompanied by a statement that the request is being made to aid in determining eligibility for employment as a law enforcement officer as defined by K.S.A. 22-2202, and amendments thereto;

(16) the attorney general and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act; or

(17) the Kansas bureau of investigation for the purposes of:

(A) Completing a person's criminal history record information within the central repository, in accordance with K.S.A. 22-4701 et seq., and amendments thereto; or

(B) providing information or documentation to the federal bureau of investigation, in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm.

(m) If the case was appealed from municipal court, the clerk of the district court shall send a certified copy of the order of expungement to the municipal court. The municipal court shall order the case expunged once the certified copy of the order of expungement is received.

~~(mn)~~ The provisions of subsection (l)(17) shall apply to records created prior to, on and after July 1, 2011.

22-2410. Expungement of arrest records; docket fee; disclosure limited upon filing of petition

...(d) When the court has ordered expungement of an arrest record and subsequent court proceedings, if any, the order shall state the information required to be stated in the petition and shall state the grounds for expungement under subsection (c). The clerk of the court shall send a certified copy of the order to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest. If the case was appealed from municipal court, the clerk of the district court shall send a certified copy of the order of expungement to the

municipal court. The municipal court shall order the case expunged once the certified copy of the order of expungement is received. If an order of expungement is entered, the petitioner shall be treated as not having been arrested. ..