



INSTITUTE FOR JUSTICE

**Testimony of Jaimie Cavanaugh  
Attorney, Institute for Justice  
House Judiciary Committee  
February 4, 2022**

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Dear Chairman Patton and Members of the Committee:

Thank you for the opportunity to submit this testimony. I am an attorney at the Institute for Justice and write to offer support of H.B. 2557. As you may know, in the last few years states are recognizing that a criminal conviction shouldn't be a lifelong sentence. As a result, expungement bills, such as HB 2557, are gaining popularity. The State of Kansas, this Committee, and the sponsors of this legislation are to be commended for taking action to help juvenile offenders expunge their criminal records.

The Institute for Justice is a nonprofit public interest law firm. One of IJ's main focuses is working to protect private property rights, including the right to be free from excessive fines and fees. IJ also works to ensure that individuals with criminal records are able to reintegrate to society after serving their sentences. To accomplish these goals, IJ has litigated and supported legislation in this area for years. Offenders should not continue to be punished by their conviction as they re-enter their communities. On top of that, being poor is not a crime, but the use of fines and fees can keep the poor buried in unending court debt.

IJ strongly supports section (d)(2), which provides in part that: "the court shall not deny the petition for expungement due to the juvenile's inability to pay outstanding costs, fees, fines, or restitution." This is an important acknowledgement of the difficulties petitioners, especially juvenile petitioners, may face in paying down court debts. Section (d)(2) goes further, though, and allows courts to consider evidence of a petitioner's unwillingness to pay court debt. IJ submits that this language is unnecessary and grants courts too much discretion. Expungement statutes should be applied evenhandedly. And this burden will likely be shifted to petitioners, meaning petitioners will be forced to prove that they are not unwilling to pay court debts. But that is not what is imagined by this bill. And in most circumstances, a petitioner may willing, but unable to pay. No one should lose a chance at expungement because they cannot afford court fines and fees. This bill should not burden petitioners in this way. Unwillingness to pay isn't relevant at an expungement hearing. There are different hearings that deal with that.

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Additionally, this Committee should consider take notice that many states are moving toward automatic expungement. In Connecticut, Michigan, Pennsylvania, Utah, and Virginia, petitioners can have certain offenses automatically expunged. In these states, expungement is largely an administrative process. The expungement laws set forth requirements that applicants must meet. If the applicants meet the requirements they are entitled to an automatic expungement of their record. These laws go further than HB 2557 in some ways because they apply not just to juveniles, but to adults.

Naturally, petitioners are people who are looking to better their situations and broaden their opportunities. Criminal records often prevent people from finding good housing, getting a good job, qualifying for an occupational license, or qualifying for student loans. These challenges are significant but even more so for a juvenile who may be laying the foundation for his future.

Given that HB 2557 only applies to juveniles and given that this bill excludes many serious infractions, this Committee should consider making expungement an automatic process. Doing so would only require the Committee to amend the bill to remove the “unwillingness” language in section (d)(2) and the following two sections:

1. Courts may consider whether “the circumstances and behavior of the petitioner warrant expungement[.]” Section (e)(1)(C).
2. “Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner. Section (d)(3).

Again, these requirements are vague and grant courts unbridled discretion, which may result in the uneven application of the statute. Worse, some petitioners might think that they are required to bring witnesses to the expungement hearing. Finding witnesses and getting them to attend a hearing can be a difficult process that might prevent an offender from petitioning at all. That goes against the purpose of this bill.

Again, HB 2557 presents great opportunity for juvenile offenders. I hope the Committee considers these proposed amendments which would result in a simpler, more equitable expungement process. Thank you for considering this testimony.