

**Testimony of Lindsey E. Smith, Juvenile Law Center in Support of HB 2557**

**Kansas Judiciary Committee**

**February 7, 2022**

My name is Lindsey E. Smith and I am a staff attorney at Juvenile Law Center. I thank the Committee for its leadership in taking on this important and timely bill. We support HB 2557 and urge the Committee to advance it with a few evidence-based changes.

**Juvenile Law Center** advocates for rights, dignity, equity and opportunity for youth in the child welfare and justice systems. We have released three major reports on juvenile records.<sup>1</sup> In our 2016 report *Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records*, we urge that children be allowed to grow up unfettered by their childhood mistakes—to have their court involvement remain in the past so they can move forward with their lives. Research confirms, and the law has repeatedly recognized,<sup>2</sup> that youth have the capacity for change and rehabilitation. Expanding access to expungement of juvenile records will remove a major barrier to youths' success and help them reach the milestones of young adulthood.

Juvenile Law Center has also engaged in substantial research and advocacy on the issue of fines and fees, beginning with our groundbreaking 2016 report *Debtors' Prison for Kids: The High Cost of Fines and Fees in the Juvenile Justice System*.<sup>3</sup> We also co-lead the Debt Free Justice campaign, serving as a resource on this issue to policymakers, researchers, and advocates across the country.

By expanding access to expungement of juvenile records regardless of wealth, HB 2557

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<sup>1</sup> *Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records*, available at [https://jlc.org/sites/default/files/publication\\_pdfs/Future%20Interrupted%20-%20final%20for%20web\\_0.pdf](https://jlc.org/sites/default/files/publication_pdfs/Future%20Interrupted%20-%20final%20for%20web_0.pdf); *Failed Policies; Forfeited Futures: A Nationwide Scorecard on Juvenile Records*, available at [https://jlc.org/sites/default/files/publication\\_pdfs/scorecard.pdf](https://jlc.org/sites/default/files/publication_pdfs/scorecard.pdf); *Juvenile Records: A National Review of State Laws on Confidentiality, Sealing, and Expungement*, available at [https://jlc.org/sites/default/files/publication\\_pdfs/national-review.pdf](https://jlc.org/sites/default/files/publication_pdfs/national-review.pdf).

<sup>2</sup> *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *J.D.B. v North Carolina*, 564 U.S. 261 (2011); *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

<sup>3</sup> Report available at <https://debtorsprison.jlc.org/documents/jlc-debtors-prison.pdf>.

will help Kansas children and families find a way forward from juvenile justice involvement and end pay-to-play justice in Kansas record-clearing. With a few research-based changes, HB 2557 could more effectively meet its goals.

*Proposed changes:*

**(1) Remove the \$176 juvenile expungement filing fee and \$19 additional charge in K.S.A. 38-2312(d)(2).**

We appreciate this Committee’s recognition that a child should not be denied expungement based on income. Unfortunately, the bill as drafted still requires a youth to pay a filing fee of either \$176 or \$195, or their expungement petition will not even be heard. This is out of reach for many young people, who often have little or no income. Nationally, in fact, 60% of families with a child in juvenile court have an income of less than \$20,000.<sup>4</sup>

Fees also increase family tension,<sup>5</sup> and parents report being forced to choose between buying basic necessities like groceries or school uniforms and paying court fees. In addition, juvenile fees are bad for public safety: a 2016 criminology study of more than 1000 cases found that youth who owed costs and fees had higher recidivism rates than those who did not, even when controlling for age, race, gender, and type of offense.<sup>6</sup>

**(2) Remove “unwillingness” language from K.S.A. 38-2312(d)(2).**

The current bill’s requirement that judges determine whether a child was “unwilling” to pay fines and fees would use up scarce judicial resources, provide little value, and create room for bias in decision-making because youth, as a class, simply cannot pay fines and fees.

Children are often legally and practically unable to work. Their focus should be successful engagement in school, probation, and court-ordered programs, but the stress

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<sup>4</sup> Tamar R. Birekhead, *Delinquent by Reason of Poverty*, 38 WASH. U.J.L. & POL’Y 53, 58-59 (2012).

<sup>5</sup> LESLIE PAIK, IMPACT OF JUVENILE JUSTICE FINES AND FEES ON FAMILY LIFE: CASE STUDY IN DANE COUNTY, WI (2019), <https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison-dane-county.pdf>.

<sup>6</sup> Alex R. Piquero & Wesley G. Jennings, “Justice System–Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders,” 15 YOUTH VIOL. & JUV. JUST. 325 (2016).

of financial sanctions can be distracting.<sup>7</sup> Research also shows that ability-to-pay determinations in practice are inconsistent, arbitrary, and tend to increase existing racial disparities in the justice system.<sup>8</sup>

Instead, we suggest K.S.A. 38-2312(d)(2) be amended to read as follows:

The court shall not deny the petition for expungement due to the juvenile's nonpayment of outstanding costs, fees, fines or restitution.

**(3) Repeal K.S.A. 38-2312(b) to allow automatic expungement of all juvenile cases.**

When a youth in Kansas has a juvenile adjudication for a serious offense, it means a judge has already ruled that youth belongs in the juvenile justice system, not the adult system.<sup>9</sup> The juvenile justice system was created to shield children from the “stigma of being branded criminal.”<sup>10</sup> No young person in juvenile court should face such a lifelong criminal stigma for childhood conduct, regardless of offense. In addition, we recommend this Committee consider amending K.S.A. 38-2312 to make expungement automatic for young people who meet the requirements. This would expand young people’s access to record-clearing and remove the burden of filing a petition from youth who may not know their rights and often will no longer have an attorney to represent them.

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We urge this Committee to advance HB 2557 with these proposed changes. If you have any questions, please feel free to contact me at (215) 851-8900 or [lsmith@jlc.org](mailto:lsmith@jlc.org).

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<sup>7</sup> *Debtor’s Prison for Kids*.

<sup>8</sup> Teresa Zhen, *(Color)Blind Reform: How Ability-To-Pay Determinations Are Inadequate to Transform a Racialized System of Penal Debt*, 43 N.Y.U. Rev. L. & Soc. Change 177 (2019).

<sup>9</sup> See K.S.A. 38-1636.

<sup>10</sup> Center on Juvenile and Criminal Justice, Juvenile Justice History, <http://www.cjcj.org/education1/juvenile-justice-history.html>.