



February 5, 2021

Rep. Fred Patton, Chair
Kansas House Judiciary Committee

Dear Chairman Patton and Committee Members:

On behalf of the City of Derby, thank you for the opportunity to testify in opposition to HB 2226 which would require city prosecutors to initiate expungement proceedings for the majority of municipal court convictions. Not only would this requirement significantly burden the time and operation of city prosecutors and municipal courts, but it also creates conflicts for city prosecutors in their ethical standards and statutory obligations to victims of crime.

I currently serve as the Assistant City Attorney/City Prosecutor for the City of Derby. I am also the City Attorney for Wellington and currently serve as the Municipal Court Judge in Caldwell and Belle Plaine. Having practiced law in rural Kansas and municipal courts for over 27 years, I know firsthand the issues and impact the proposed bill will have on city prosecutors and municipal court operations.

Most small communities employ their prosecutors on a part-time basis. The very small communities in Kansas, such as Caldwell and Belle Plaine, may only employ their prosecutors for one or two days per month. The attorney handles municipal court matters that originate from officers writing tickets and they handle any trials or appeals that result from these cases in their limited time. Attorneys willing to do this service are few and far between, oftentimes giving up an evening with their family or missing a child's ballgame because the municipal courts only meet in the evenings.

For these communities, the added expense of having the part-time attorney track which cases are eligible for expungement and prepare the expungement motion and order will significantly change their court operations and impact their budgets. In Derby, I work approximately 20 hours per week, including a full court day on Thursdays. The remainder of my time is spent preparing cases for court, working with law enforcement and defense attorneys, and responding to subpoenas and requests for law enforcement records. The added burden of tracking and preparing expungement pleadings required by the bill would be difficult to manage within my currently scheduled time given the sheer volume of cases flowing through Derby's municipal court and my other obligations.

The bill also raises considerable ethical issues for myself and other city prosecutors, especially with regard to our obligations to crime victims found in the Bill of rights for victims of crime, K.S.A. 74-7333, *et seq.* Victims are required to be notified of expungement proceedings under K.S.A. 74-7335, but HB2226 appears to eliminate expungement hearings and the opportunity for victims to object to expungements in the majority of cases, including domestic battery convictions. The bill also creates conflict with regard to counting prior domestic battery convictions or evaluating domestic battery convictions under the criminal use of weapons statute.

Cities, prosecutors, and municipal courts are already balancing multiple duties in honoring their obligations to due process, victims' rights, and seeking justice. Requiring prosecutors to file unrequested expungement motions on behalf of defendants creates conflict in this role and solely benefits the defendant.

Sincerely,

A handwritten signature in black ink, appearing to read 'RAD', with a long horizontal flourish extending to the right.

•Shawn R. DeJarnett

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