



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

February 19, 1992

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 92- 27

Mike Ward
Butler County Attorney
Jail-Judicial Bldg.
El Dorado, Kansas 67042

Re: Crimes and Punishment -- Sentencing --
Expungement; Release of Records to Victim

Public Records, Documents and Information --
Records Open to Public -- Certain Records Not
Required to be Open; Expungement of Criminal
Record

Synopsis: Records previously closed pursuant to a valid
expungement order may not be disclosed to the
victim, or anyone else, unless such person
qualifies for access pursuant to K.S.A. 1991
Supp. 21-4619(i). However, as they are not
records of arrest, conviction or incarceration
related to the expunged crime, criminal
investigation files may be discretionarily opened
pursuant to K.S.A. 1991 Supp. 45-221(a)(10) unless
mandatorily closed pursuant to other authority.
Cited herein: K.S.A. 1991 Supp. 21-4619; K.S.A.
45-215; 45-217; K.S.A. 1991 Supp. 45-221.

* * *

Dear Mr. Ward:

As Butler county attorney you request our opinion on the release of information to a victim of child abuse. You inform us that the information requested by the former minor concerns a conviction which occurred eleven years ago, but which was expunged in 1985 prior to the statutory amendment prohibiting expungement of child sexual abuse convictions. You indicate that the requested information includes transcripts of hearings, copies of police reports, journal entries, etc. You state that you would like to provide information to the victim, however, you ask whether K.S.A. 1991 Supp. 21-4619(i) prohibits such release.

K.S.A. 45-215 et seq. set forth the Kansas open records act (KORA), and generally require that all documents meeting the definition of a public record be open unless otherwise permissibly or mandatorily closed by law. However, the definition of public agency set forth in the KORA excludes applicability of this act to any municipal judge, judge of the district court, judge of the court of appeals or justice of the supreme court. See K.S.A. 45-217(e)(2)(B). In addition, K.S.A. 1991 Supp. 45-221(a)(1) recognizes that statutory authority outside the KORA may operate to close specific public records. K.S.A. 1991 Supp. 21-4619(i) represents such closure and provides in pertinent part:

"Whenever the record of any conviction 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 and incarceration relating to that crime shall not disclose the existence of such records, except when requested by: . . ." (Emphasis added)

The exceptions following this language do not permit release upon the request of the victim. However, K.S.A. 1991 Supp. 21-4619(i)(5) authorizes release to persons entitled to such information pursuant to the terms of the expungement order. We do not have information concerning the order in question, and thus, must assume it does not provide the victim with access to expunged records.

As you note, current expungement authority does not permit expungement of certain child sexual abuse convictions. See K.S.A. 1991 Supp. 21-4619(c). Thus, had expungement of the crime in question been sought following enactment of K.S.A. 1991 Supp. 21-4619(c), it would have been denied and the records in question would not be closed pursuant to K.S.A. 1991 Supp. 21-4619(i). However, K.S.A. 1991 Supp. 21-4619(i) recognizes that expungement may have occurred pursuant to former statutory authority. Because such expungement was previously lawful, records sealed pursuant to former expungement authority nevertheless remain subject to the restrictions set forth at K.S.A. 1991 Supp. 21-4619(i).

K.S.A. 1991 Supp. 21-4619(f) sets forth certain circumstances wherein the fact that the expunged conviction occurred may be disclosed or used, e.g. (f)(3) allows the court order to specify circumstances under which the conviction may be disclosed. However, it is records related to the conviction, and not the fact of the conviction itself, that have been requested. To expunge is defined as "to destroy; blot out; obliterate; erase; efface designedly; strike out wholly. The act of physically destroying information - including criminal records - in files, computers, or other depositories." Blacks Law Dictionary 522 (5th ed. 1979). Some laws concerning expungement contemplate the total destruction of all records relating to the crime. See People v. Wright, 598 P.2d 157 (Colo. 1979); 21 Am.Jur.2d Criminal Law, § 1021 (1981); 62A Am.Jur.2d Privacy § 206 (1990). However, Kansas provisions concerning expungement merely close the records concerning conviction, thus permitting limited access pursuant to the terms of K.S.A. 1991 Supp. 21-4619(i). The records closed upon expungement are described as ". . . records of arrest, conviction and incarceration relating to the crime. . . ." You indicate that the requested information includes hearing transcripts, police reports and journal entries. Some of these records are generally closed when expungement of a conviction occurs. Journal entries and hearing transcripts are records clearly relating to the conviction of a crime. Police investigation records generally do not relate to or contain information concerning records of arrest, incarceration or conviction. Thus, such records may be discretionarily opened or closed pursuant to K.S.A. 1991 Supp. 45-221(a)(10).

Thus, it is our opinion that records previously closed pursuant to a valid expungement order may not be disclosed to the victim, or anyone else, unless such person qualifies for access pursuant to K.S.A. 1991 Supp. 21-4619(i). However, records not concerning the conviction, arrest or incarceration on the expunged crime may be opened unless mandatorily closed pursuant to other authority.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Theresa Marcel Nuckolls
Assistant Attorney General

RTS:JLM:TMN:bas