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Senate Judiciary Committee

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Chairperson Humphries and members of the committee, my name is Marisa Bayless and I am the Special Counsel to the Chief Justice. Today I am offering neutral testimony on HB 2357. The judicial branch has supported several eviction resolution programs across the state. The 18th Judicial District (Sedgwick County), the 10th Judicial District (Johnson County), and the 7th Judicial District (Douglas County) are all district courts that have started these programs. The Office of Judicial Administration initiated the program in the 18th Judicial District with the support of the National Center for State Courts, following a recommendation made by the Supreme Court's Ad Hoc Committee on Best Practices for Eviction Proceedings. OJA also worked with that committee to produce educational videos for the public to explain the Kansas eviction process and related resources. These are now available on kscourts.gov.

This testimony is offered to the committee to address some concerns on the ability of the court to achieve what the bill requires.

Automatically Sealing Chapter 61 Evictions.

It is possible for the court to seal Chapter 61 evictions upon filing. However, if you seal a case in this way, the only way an unrepresented party will be able to access the case is by going to the courthouse and filing a request with the clerk to view the case. A represented person's attorney has access through the eFiling system. The nature of eviction cases is such that most landlords are represented, and most tenants are unrepresented. Kansas statutes establish an expedited timeframe for eviction cases, so relying on traditional modes of service (e.g., by U.S. mail) for information about a case may create unique hurdles for an unrepresented litigant who is trying to track case events.

The bill proposes that cases must remain permanently sealed unless there is a judgment in favor of the plaintiff. There are a number of exceptions to this rule: the defendant can request unsealing even if the defendant wins; the defendant and plaintiff can jointly agree to unseal the

case, even if the defendant wins; and the court can independently decide to keep the case sealed following a determination of good cause. Good cause includes, but isn't limited to, a finding that the tenant is a victim of domestic violence, a finding that there is fault by the plaintiff and defendant, or any other identified safety, property, or privacy interest. The bill does not expressly say that a judge must weigh this good cause factor in every eviction case. Some judges may read the bill to impose that requirement. Because there are several exceptions to the general rules governing unsealing the case, the decision about unsealing it would need to be made on a case-by-case basis. This process will significantly increase case processing times for eviction proceedings.

As noted above, good cause includes but is not limited to a tenant who is a victim of domestic violence. The bill does not specify what it means to be a victim of domestic violence. Would there need to be a conviction in a criminal case related to domestic abuse, or would the issuance of a temporary or permanent protection order be sufficient? Would the protection order or conviction need to relate to a co-tenant or the landlord? The "good cause" categories listed in the bill are quite broad, and would likely lead to the filing of numerous new requests to keep cases sealed that courts will need to process individually.

Automatic Expungement

After the initial determination about unsealing the case is made, courts would need to continue monitoring the case for two years, at which point the unsealed case would need to be assessed for an automated expungement process. The bill proposes that this occur without any action by the parties, leaving the burden with court staff to track and act on case status. The bill further notes that a case must not be expunged if a monetary judgment is unsatisfied, unless the plaintiff and defendant agree to expungement. Further, the case must not be expunged if the defendant has had an additional eviction judgment entered within the two-year window.

Though the bill describes this expungement process as an "automatic" expungement, it is important to note that there is no way at present for the court system to automate a process with this many contingencies. Courts will need to manually track unsealed eviction cases, review the case for a monetary judgment, assess whether there is any record of that judgment having been satisfied, assess whether the clerk can locate any other subsequent eviction cases connected to that particular defendant, and then determine if expungement is appropriate. Further, the courts will need to navigate special requests to seal or unseal that may arrive from parties throughout the process. For cases that involve an unsatisfied judgment or subsequent eviction, the manual review loop may go on for years. The volume of this work will compound with time as new cases are added to the review queue for eventual expungement. The number of cases involved is not insignificant -- in calendar years 2023 and 2024 combined, there were approximately 32,400 eviction cases filed across the state.

Requirement of Mediation

While the branch supports eviction mediation, not all judicial districts are able to provide that mediation through staffed programs or volunteer mediations. The current language of the bill requires an order of mediation, unless the court finds that mediation would not aid the parties

materially. If the court is required to order mediation, someone will likely have to pay for the service, if there are any services available in that county. The bill does not specify who is responsible for that cost and does not contemplate what happens if there are no mediation services available. The cost of mandated mediation may fall on the litigants themselves.

Conclusion

The unsealing process outlined in this bill is complex, as are the automated expungement components of the bill. In speaking with our programmers, while the ability to automatically seal the case at the initial filing is available, this automation is not available for these subsequent scenarios given all the contingencies and exceptions surrounding the process. The courts, manually through judges and clerks, would need to analyze each case individually and make a decision about unsealing at that time. This will take a significant amount of time and effort to make sure that there is a tracking system in place for each filing, and to check the cases at appropriate intervals for unsealing or expungement eligibility.

The Office of Judicial Administration greatly supports eviction mediation and resolution programs, however we are concerned with the requirements in this bill that as currently written could place a large burden on courts and staff to manually track eviction cases for different outcomes for many years into the future. We are open to working with the bill sponsors to try to craft something that is more manageable.