

Or who is prohibited from shipping, transporting, possessing or receiving firearms or ammunition by 18 USC § 922 (d)(4) or (g)(4).

*Session of 2011*

## HOUSE BILL No. 2329

By Committee on Corrections and Juvenile Justice

2-11

1 AN ACT concerning courts; relating to expunged records; relating to  
2 petitions for relief; amending K.S.A. 22-4701 and 22-4705 and K.S.A.  
3 2010 Supp. 12-4516a, 22-2410 and 38-2312 and section 254 of  
4 chapter 136 or the 2010 Session Laws of Kansas repealing the existing  
5 sections.

6  
7 *Be it enacted by the Legislature of the State of Kansas:*

8 New Section 1. (a) An individual who has been adjudicated as a  
9 mentally ill person subject to involuntary commitment for care and  
10 treatment, may petition for relief of disabilities for the purpose of firearm  
11 prohibitions imposed under state and federal laws.

12 (b) A petitioner shall submit such petition to a court of competent  
13 jurisdiction within this state.

14 (c) The court may only consider petitions for relief due to mental  
15 health adjudications or commitments that occurred within the state.

16 (d) The court shall consider the petition for relief, in accordance  
17 with the principles of due process. Such petitioner shall submit, and such  
18 court shall receive and consider:

19 (1) The circumstances regarding the firearm disability imposed by  
20 federal law;

21 (2) such petitioner's mental health records;

22 (3) such petitioner's criminal history records; and

23 (4) such petitioner's reputation, developed through character witness  
24 statements, testimony or other character evidence.

25 (e) The court shall grant relief only if such court determines that:

26 (1) The petitioner will not be likely to act in a manner dangerous to  
27 public safety; and

28 (2) granting such relief would not be contrary to the public interest.

29 (f) (1) If the court denies the petition for relief, the petitioner may  
30 petition a court of proper jurisdiction for a de novo judicial review of the  
31 court's decision to deny such petition.

32 (2) ~~The reviewing court may give deference to the decision of the~~  
33 ~~court denying such relief.~~

34 (g) Documentation of a granted petition shall be submitted to the  
35 Kansas bureau of investigation. The Kansas bureau of investigation shall  
36 immediately cause such order to be entered into the appropriate state and  
37 federal databases.

38 (h) As used in this section:

there is clear and convincing  
evidence

Senate Judiciary

3-9-11  
Attachment 7

(c) There shall be no expungement of records or files of a person who is required to register pursuant to the Kansas offender registration act, K.S.A. 22-4902, *et seq.*, and amendments thereto.

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10

1 of the offenses specified in this subsection.

2 →(e)(d) When a petition for expungement is filed, the court shall set a  
3 date for a hearing on the petition and shall give notice thereof to the  
4 county or district attorney. The petition shall state: (1) The juvenile's full  
5 name; (2) the full name of the juvenile as reflected in the court record, if  
6 different than (1); (3) the juvenile's sex and date of birth; (4) the offense  
7 for which the juvenile was adjudicated; (5) the date of the trial; and (6)  
8 the identity of the trial court. Except as otherwise provided by law, a  
9 petition for expungement shall be accompanied by a docket fee in the  
10 amount of \$100. On and after the effective date of this act through June  
11 30, 2011, the supreme court may impose a charge, not to exceed \$15 per  
12 case, to fund the costs of non-judicial personnel. All petitions for  
13 expungement shall be docketed in the original action. Any person who  
14 may have relevant information about the petitioner may testify at the  
15 hearing. The court may inquire into the background of the petitioner.

16 (d)(e) (1) After hearing, the court shall order the expungement of the  
17 records and files if the court finds that:

18 (A) The juvenile has reached 23 years of age or that two years have  
19 elapsed since the final discharge;

20 (B) since the final discharge of the juvenile, the juvenile has not  
21 been convicted of a felony or of a misdemeanor other than a traffic  
22 offense or adjudicated as a juvenile offender under the revised Kansas  
23 juvenile justice code and no proceedings are pending seeking such a  
24 conviction or adjudication; and

25 (C) the circumstances and behavior of the petitioner warrant  
26 expungement.

27 (2) The court may require that all court costs, fees and restitution  
28 shall be paid.

29 (e)(f) Upon entry of an order expunging records or files, the offense  
30 which the records or files concern shall be treated as if it never occurred,  
31 except that upon conviction of a crime or adjudication in a subsequent  
32 action under this code the offense may be considered in determining the  
33 sentence to be imposed. The petitioner, the court and all law enforcement  
34 officers and other public offices and agencies shall properly reply on  
35 inquiry that no record or file exists with respect to the juvenile. Inspection  
36 of the expunged files or records thereafter may be permitted by order of  
37 the court upon petition by the person who is the subject thereof. The  
38 inspection shall be limited to inspection by the person who is the subject  
39 of the files or records and the person's designees.

40 (f)(g) A *certified Copiescopy* of any order made pursuant to  
41 subsection (a) or (e)(d) shall be sent to ~~each public officer and agency in~~  
42 ~~the county having possession of any~~ *the Kansas bureau of investigation,*  
43 *which shall notify every juvenile or criminal justice agency which may*  
44 *possess records or files ordered to be expunged. If the officer or agency*  
45 *fails to comply with the order within a reasonable time after its receipt,*  
46 ~~the officer or such~~ *agency may be adjudged in contempt of court and*

- 1 amendments thereto;
- 2 (11) murder in the first degree as defined in *K.S.A. 21-3401, prior to*
- 3 *its repeal, or section 37 of chapter 136 of the 2010 Session Laws of*
- 4 *Kansas, and amendments thereto;*
- 5 (12) murder in the second degree as defined in *K.S.A. 21-3402, prior*
- 6 *to its repeal, or section 38 of chapter 136 of the 2010 Session Laws of*
- 7 *Kansas, and amendments thereto;*
- 8 (13) voluntary manslaughter as defined in *K.S.A. 21-3403, prior to*
- 9 *its repeal, or section 39 of chapter 136 of the 2010 Session Laws of*
- 10 *Kansas, and amendments thereto;*
- 11 (14) involuntary manslaughter as defined in *K.S.A. 21-3404, prior to*
- 12 *its repeal, or section 40 of chapter 136 of the 2010 Session Laws of*
- 13 *Kansas, and amendments thereto;*
- 14 (15) sexual battery as defined in *K.S.A. 21-3517, prior to its repeal,*
- 15 *or section 69 of chapter 136 of the 2010 Session Laws of Kansas, and*
- 16 *amendments thereto, when the victim was less than 18 years of age at the*
- 17 *time the crime was committed;*
- 18 (16) aggravated sexual battery as defined in *K.S.A. 21-3518, prior to*
- 19 *its repeal, or section 69 of chapter 136 of the 2010 Session Laws of*
- 20 *Kansas, and amendments thereto;*
- 21 (17) a violation of *K.S.A. 8-1567, and amendments thereto,*
- 22 *including any diversion for such violation;*
- 23 (18) a violation of *K.S.A. 8-2,144, and amendments thereto,*
- 24 *including any diversion for such violation; or*
- 25 (19) any conviction for any offense in effect at any time prior to ~~the~~
- 26 ~~effective date of this act~~ *July 1, 2011, that is comparable to any offense as*
- 27 *provided in this subsection.*

28 → ~~(d)~~(e) (1) When a petition for expungement is filed, the court shall  
 29 set a date for a hearing of such petition and shall cause notice of such  
 30 hearing to be given to the prosecutor and the arresting law enforcement  
 31 agency. The petition shall state the:

- 32 (A) Defendant's full name;
- 33 (B) full name of the defendant at the time of arrest, conviction or
- 34 diversion, if different than the defendant's current name;
- 35 (C) defendant's sex, race and date of birth;
- 36 (D) crime for which the defendant was arrested, convicted or
- 37 diverted;
- 38 (E) date of the defendant's arrest, conviction or diversion; and
- 39 (F) identity of the convicting court, arresting law enforcement
- 40 authority or diverting authority.

41 (2) Except as *otherwise* provided ~~further, there shall be no docket~~  
 42 ~~fee for filing a petition pursuant to this section~~ *by law, a petition for*  
 43 *expungement shall be accompanied by a docket fee in the amount of*  
 44 *\$100. On and after July 1, 2009 through June 30, 2010* ~~April 15, 2010~~  
 45 *through June 30, 2011, the supreme court may impose a charge, not to*  
 46 *exceed \$10* ~~\$15~~ *per case, to fund the costs of non-judicial personnel. The*

(d) There shall be no expungement of any conviction or other criminal history of a person who is required to register pursuant to the Kansas offender registration act, K.S.A. 22-4902, *et seq.*, and amendments thereto.