

As Amended by House Committee

Session of 2014

HOUSE BILL No. 2662

By Committee on Federal and State Affairs

2-12

1 AN ACT concerning crimes and punishment; relating to expungement of  
2 certain convictions; amending K.S.A. 2013 Supp. 21-6614 and  
3 repealing the existing section; **also repealing K.S.A. 2013 Supp. 21-**  
4 **6614d.**

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2013 Supp. 21-6614 is hereby amended to read as  
8 follows: 21-6614. (a) (1) Except as provided in subsections (b), (c), (d),  
9 ~~and (e) and (f)~~, any person convicted in this state of ~~a violation of K.S.A.~~  
10 ~~8-1567, and amendments thereto~~, a traffic infraction, cigarette or tobacco  
11 infraction, misdemeanor or a class D or E felony, or for crimes committed  
12 on or after July 1, 1993, nondrug crimes ranked in severity levels 6  
13 through 10, or for crimes committed on or after July 1, 1993, but prior to  
14 July 1, 2012, any felony ranked in severity level 4 of the drug grid, or for  
15 crimes committed on or after July 1, 2012, any felony ranked in severity  
16 level 5 of the drug grid may petition the convicting court for the  
17 expungement of such conviction or related arrest records if three or more  
18 years have elapsed since the person: (A) Satisfied the sentence imposed; or  
19 (B) was discharged from probation, a community correctional services  
20 program, parole, postrelease supervision, conditional release or a  
21 suspended sentence.

22 (2) Except as provided in subsections (b), (c), (d), ~~and (e) and (f)~~, any  
23 person who has fulfilled the terms of a diversion agreement may petition  
24 the district court for the expungement of such diversion agreement and  
25 related arrest records if three or more years have elapsed since the terms of  
26 the diversion agreement were fulfilled.

27 (b) Any person convicted of prostitution, as defined in K.S.A. 21-  
28 3512, prior to its repeal, convicted of a violation of K.S.A. 2013 Supp. 21-  
29 6419, and amendments thereto, or who entered into a diversion agreement  
30 in lieu of further criminal proceedings for such violation, may petition the  
31 convicting court for the expungement of such conviction or diversion  
32 agreement and related arrest records if:

33 (1) One or more years have elapsed since the person satisfied the  
34 sentence imposed or the terms of a diversion agreement or was discharged  
35 from probation, a community correctional services program, parole,  
36 postrelease supervision, conditional release or a suspended sentence; and

1 (2) such person can prove they were acting under coercion caused by  
2 the act of another. For purposes of this subsection, "coercion" means:  
3 Threats of harm or physical restraint against any person; a scheme, plan or  
4 pattern intended to cause a person to believe that failure to perform an act  
5 would result in bodily harm or physical restraint against any person; or the  
6 abuse or threatened abuse of the legal process.

7 (c) Except as provided in subsections ~~(e)~~ (d) and ~~(f)~~ (e), no person  
8 may petition for expungement until five or more years have elapsed since  
9 the person satisfied the sentence imposed or the terms of a diversion  
10 agreement or was discharged from probation, a community correctional  
11 services program, parole, postrelease supervision, conditional release or a  
12 suspended sentence, if such person was convicted of a class A, B or C  
13 felony, or for crimes committed on or after July 1, 1993, if convicted of an  
14 off-grid felony or any nondrug crime ranked in severity levels 1 through 5,  
15 or for crimes committed on or after July 1, 1993, but prior to July 1, 2012,  
16 any felony ranked in severity levels 1 through 3 of the drug grid, or for  
17 crimes committed on or after July 1, 2012, any felony ranked in severity  
18 levels 1 through 4 of the drug grid, or:

19 (1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its  
20 repeal, or K.S.A. 2013 Supp. 21-5406, and amendments thereto, or as  
21 prohibited by any law of another state which is in substantial conformity  
22 with that statute;

23 **(2) violating K.S.A. 8-1567, and amendments thereto, or violating**  
24 **any law of another state which declares to be unlawful the acts**  
25 **prohibited by that statute;**

26 ~~(2)~~ (3) driving while the privilege to operate a motor vehicle on the  
27 public highways of this state has been canceled, suspended or revoked, as  
28 prohibited by K.S.A. 8-262, and amendments thereto, or as prohibited by  
29 any law of another state which is in substantial conformity with that  
30 statute;

31 ~~(3)~~ (4) perjury resulting from a violation of K.S.A. 8-261a, and  
32 amendments thereto, or resulting from the violation of a law of another  
33 state which is in substantial conformity with that statute;

34 ~~(4)~~ (5) violating the provisions of the fifth clause of K.S.A. 8-142,  
35 and amendments thereto, relating to fraudulent applications or violating  
36 the provisions of a law of another state which is in substantial conformity  
37 with that statute;

38 ~~(5)~~ (6) any crime punishable as a felony wherein a motor vehicle was  
39 used in the perpetration of such crime;

40 ~~(6)~~ (7) failing to stop at the scene of an accident and perform the  
41 duties required by K.S.A. 8-1602, 8-1603, prior to its repeal, or 8-1604,  
42 and amendments thereto, or required by a law of another state which is in  
43 substantial conformity with those statutes;

1       (7) ~~(8)~~ violating the provisions of K.S.A. 40-3104, and amendments  
2 thereto, relating to motor vehicle liability insurance coverage; ~~or~~

3       **(9) violating K.S.A. 2013 Supp. 8-1025, and amendments thereto,**  
4 **or violating any law of another state which declares to be unlawful the**  
5 **acts prohibited by that statute; or**

6       ~~(8)(10)~~ a violation of K.S.A. 21-3405b, prior to its repeal.

7       ~~(d) No person may petition for expungement until 10 or more years~~  
8 ~~have elapsed since the person satisfied the sentence imposed or the terms~~  
9 ~~of a diversion agreement or was discharged from probation, a community~~  
10 ~~correctional services program, parole, postrelease supervision, conditional~~  
11 ~~release or a suspended sentence, if such person was convicted of a~~  
12 ~~violation of K.S.A. 8-1567, and amendments thereto, including any~~  
13 ~~diversion for such violation.~~

14       ~~(e)~~ (d) There shall be no expungement of convictions for the  
15 following offenses or of convictions for an attempt to commit any of the  
16 following offenses:

17       (1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.  
18 2013 Supp. 21-5503, and amendments thereto;

19       (2) indecent liberties with a child or aggravated indecent liberties  
20 with a child, as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal,  
21 or K.S.A. 2013 Supp. 21-5506, and amendments thereto;

22       (3) criminal sodomy, as defined in subsection (a)(2) or (a)(3) of  
23 K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) or (a)(4) of K.S.A.  
24 2013 Supp. 21-5504, and amendments thereto;

25       (4) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior  
26 to its repeal, or K.S.A. 2013 Supp. 21-5504, and amendments thereto;

27       (5) indecent solicitation of a child or aggravated indecent solicitation  
28 of a child, as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal,  
29 or K.S.A. 2013 Supp. 21-5508, and amendments thereto;

30       (6) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior  
31 to its repeal, or K.S.A. 2013 Supp. 21-5510, and amendments thereto;

32       (7) aggravated incest, as defined in K.S.A. 21-3603, prior to its  
33 repeal, or K.S.A. 2013 Supp. 21-5604, and amendments thereto;

34       (8) endangering a child or aggravated endangering a child, as defined  
35 in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2013 Supp.  
36 21-5601, and amendments thereto;

37       (9) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal,  
38 or K.S.A. 2013 Supp. 21-5602, and amendments thereto;

39       (10) capital murder, as defined in K.S.A. 21-3439, prior to its repeal,  
40 or K.S.A. 2013 Supp. 21-5401, and amendments thereto;

41       (11) murder in the first degree, as defined in K.S.A. 21-3401, prior to  
42 its repeal, or K.S.A. 2013 Supp. 21-5402, and amendments thereto;

43       (12) murder in the second degree, as defined in K.S.A. 21-3402, prior

1 to its repeal, or K.S.A. 2013 Supp. 21-5403, and amendments thereto;

2 (13) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to  
3 its repeal, or K.S.A. 2013 Supp. 21-5404, and amendments thereto;

4 (14) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to  
5 its repeal, or K.S.A. 2013 Supp. 21-5405, and amendments thereto;

6 (15) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal,  
7 or K.S.A. 2013 Supp. 21-5505, and amendments thereto, when the victim  
8 was less than 18 years of age at the time the crime was committed;

9 (16) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to  
10 its repeal, or K.S.A. 2013 Supp. 21-5505, and amendments thereto;

11 (17) a violation of K.S.A. 8-2,144, and amendments thereto,  
12 including any diversion for such violation; or

13 (18) any conviction for any offense in effect at any time prior to July  
14 1, 2011, that is comparable to any offense as provided in this subsection.

15 ~~(f)~~ (e) Notwithstanding any other law to the contrary, for any offender  
16 who is required to register as provided in the Kansas offender registration  
17 act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no  
18 expungement of any conviction or any part of the offender's criminal  
19 record while the offender is required to register as provided in the Kansas  
20 offender registration act.

21 ~~(g)~~ (f) (1) When a petition for expungement is filed, the court shall  
22 set a date for a hearing of such petition and shall cause notice of such  
23 hearing to be given to the prosecutor and the arresting law enforcement  
24 agency. The petition shall state the:

25 (A) Defendant's full name;

26 (B) full name of the defendant at the time of arrest, conviction or  
27 diversion, if different than the defendant's current name;

28 (C) defendant's sex, race and date of birth;

29 (D) crime for which the defendant was arrested, convicted or  
30 diverted;

31 (E) date of the defendant's arrest, conviction or diversion; and

32 (F) identity of the convicting court, arresting law enforcement  
33 authority or diverting authority.

34 (2) Except as otherwise provided by law, a petition for expungement  
35 shall be accompanied by a docket fee in the amount of \$100. On and after  
36 ~~April 12, 2012, through June 30, 2013~~ **July 1, 2013, through July 1,**  
37 **2015**, the supreme court may impose a charge, not to exceed \$19 per case,  
38 to fund the costs of non-judicial personnel. The charge established in this  
39 section shall be the only fee collected or moneys in the nature of a fee  
40 collected for the case. Such charge shall only be established by an act of  
41 the legislature and no other authority is established by law or otherwise to  
42 collect a fee.

43 (3) All petitions for expungement shall be docketed in the original

1 criminal action. Any person who may have relevant information about the  
2 petitioner may testify at the hearing. The court may inquire into the  
3 background of the petitioner and shall have access to any reports or  
4 records relating to the petitioner that are on file with the secretary of  
5 corrections or the prisoner review board.

6 (†) (g) At the hearing on the petition, the court shall order the  
7 petitioner's arrest record, conviction or diversion expunged if the court  
8 finds that:

9 (1) The petitioner has not been convicted of a felony in the past two  
10 years and no proceeding involving any such crime is presently pending or  
11 being instituted against the petitioner;

12 (2) the circumstances and behavior of the petitioner warrant the  
13 expungement; and

14 (3) the expungement is consistent with the public welfare.

15 (†) (h) When the court has ordered an arrest record, conviction or  
16 diversion expunged, the order of expungement shall state the information  
17 required to be contained in the petition. The clerk of the court shall send a  
18 certified copy of the order of expungement to the Kansas bureau of  
19 investigation which shall notify the federal bureau of investigation, the  
20 secretary of corrections and any other criminal justice agency which may  
21 have a record of the arrest, conviction or diversion. After the order of  
22 expungement is entered, the petitioner shall be treated as not having been  
23 arrested, convicted or diverted of the crime, except that:

24 (1) Upon conviction for any subsequent crime, the conviction that  
25 was expunged may be considered as a prior conviction in determining the  
26 sentence to be imposed;

27 (2) the petitioner shall disclose that the arrest, conviction or diversion  
28 occurred if asked about previous arrests, convictions or diversions:

29 (A) In any application for licensure as a private detective, private  
30 detective agency, certification as a firearms trainer pursuant to K.S.A.  
31 2013 Supp. 75-7b21, and amendments thereto, or employment as a  
32 detective with a private detective agency, as defined by K.S.A. 75-7b01,  
33 and amendments thereto; as security personnel with a private patrol  
34 operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with  
35 an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of  
36 the ~~department for children and families~~ **Kansas department for aging**  
37 **and disability services**;

38 (B) in any application for admission, or for an order of reinstatement,  
39 to the practice of law in this state;

40 (C) to aid in determining the petitioner's qualifications for  
41 employment with the Kansas lottery or for work in sensitive areas within  
42 the Kansas lottery as deemed appropriate by the executive director of the  
43 Kansas lottery;

1 (D) to aid in determining the petitioner's qualifications for executive  
2 director of the Kansas racing and gaming commission, for employment  
3 with the commission or for work in sensitive areas in parimutuel racing as  
4 deemed appropriate by the executive director of the commission, or to aid  
5 in determining qualifications for licensure or renewal of licensure by the  
6 commission;

7 (E) to aid in determining the petitioner's qualifications for the  
8 following under the Kansas expanded lottery act: (i) Lottery gaming  
9 facility manager or prospective manager, racetrack gaming facility  
10 manager or prospective manager, licensee or certificate holder; or (ii) an  
11 officer, director, employee, owner, agent or contractor thereof;

12 (F) upon application for a commercial driver's license under K.S.A.  
13 8-2,125 through 8-2,142, and amendments thereto;

14 (G) to aid in determining the petitioner's qualifications to be an  
15 employee of the state gaming agency;

16 (H) to aid in determining the petitioner's qualifications to be an  
17 employee of a tribal gaming commission or to hold a license issued  
18 pursuant to a tribal-state gaming compact;

19 (I) in any application for registration as a broker-dealer, agent,  
20 investment adviser or investment adviser representative all as defined in  
21 K.S.A. 17-12a102, and amendments thereto;

22 (J) in any application for employment as a law enforcement officer as  
23 defined in K.S.A. 22-2202 or 74-5602, and amendments thereto; or

24 (K) for applications received on and after July 1, 2006, to aid in  
25 determining the petitioner's qualifications for a license to carry a concealed  
26 weapon pursuant to the personal and family protection act, K.S.A. 2013  
27 Supp. 75-7c01 et seq., and amendments thereto;

28 (3) the court, in the order of expungement, may specify other  
29 circumstances under which the conviction is to be disclosed;

30 (4) the conviction may be disclosed in a subsequent prosecution for  
31 an offense which requires as an element of such offense a prior conviction  
32 of the type expunged; and

33 (5) upon commitment to the custody of the secretary of corrections,  
34 any previously expunged record in the possession of the secretary of  
35 corrections may be reinstated and the expungement disregarded, and the  
36 record continued for the purpose of the new commitment.

37 (†) (i) Whenever a person is convicted of a crime, pleads guilty and  
38 pays a fine for a crime, is placed on parole, postrelease supervision or  
39 probation, is assigned to a community correctional services program, is  
40 granted a suspended sentence or is released on conditional release, the  
41 person shall be informed of the ability to expunge the arrest records or  
42 conviction. Whenever a person enters into a diversion agreement, the  
43 person shall be informed of the ability to expunge the diversion.

1       ~~(k)~~~~(+)~~ (j) (1) Subject to the disclosures required pursuant to  
2 subsection~~(+)~~ (h), in any application for employment, license or other civil  
3 right or privilege, or any appearance as a witness, a person whose arrest  
4 records, conviction or diversion of a crime has been expunged under this  
5 statute may state that such person has never been arrested, convicted or  
6 diverted of such crime.

7       (2) Notwithstanding the provisions of subsection~~(k)~~~~(+)~~ (j)(1), and  
8 except as provided in subsection (a)(3)(A) of K.S.A. 2013 Supp. 21-6304,  
9 and amendments thereto, the expungement of a prior felony conviction  
10 does not relieve the individual of complying with any state or federal law  
11 relating to the use, shipment, transportation, receipt or possession of  
12 firearms by persons previously convicted of a felony.

13       ~~(+)~~ (k) Whenever the record of any arrest, conviction or diversion has  
14 been expunged under the provisions of this section or under the provisions  
15 of any other existing or former statute, the custodian of the records of  
16 arrest, conviction, diversion and incarceration relating to that crime shall  
17 not disclose the existence of such records, except when requested by:

18       (1) The person whose record was expunged;

19       (2) a private detective agency or a private patrol operator, and the  
20 request is accompanied by a statement that the request is being made in  
21 conjunction with an application for employment with such agency or  
22 operator by the person whose record has been expunged;

23       (3) a court, upon a showing of a subsequent conviction of the person  
24 whose record has been expunged;

25       (4) the secretary ~~of the department for children and families~~ **aging**  
26 **and disability services**, or a designee of the secretary, for the purpose of  
27 obtaining information relating to employment in an institution, as defined  
28 in K.S.A. 76-12a01, and amendments thereto, of the ~~department for~~  
29 ~~children and families~~ **Kansas department for aging and disability**  
30 **services** of any person whose record has been expunged;

31       (5) a person entitled to such information pursuant to the terms of the  
32 expungement order;

33       (6) a prosecutor, and such request is accompanied by a statement that  
34 the request is being made in conjunction with a prosecution of an offense  
35 that requires a prior conviction as one of the elements of such offense;

36       (7) the supreme court, the clerk or disciplinary administrator thereof,  
37 the state board for admission of attorneys or the state board for discipline  
38 of attorneys, and the request is accompanied by a statement that the  
39 request is being made in conjunction with an application for admission, or  
40 for an order of reinstatement, to the practice of law in this state by the  
41 person whose record has been expunged;

42       (8) the Kansas lottery, and the request is accompanied by a statement  
43 that the request is being made to aid in determining qualifications for

1 employment with the Kansas lottery or for work in sensitive areas within  
2 the Kansas lottery as deemed appropriate by the executive director of the  
3 Kansas lottery;

4 (9) the governor or the Kansas racing and gaming commission, or a  
5 designee of the commission, and the request is accompanied by a  
6 statement that the request is being made to aid in determining  
7 qualifications for executive director of the commission, for employment  
8 with the commission, for work in sensitive areas in parimutuel racing as  
9 deemed appropriate by the executive director of the commission or for  
10 licensure, renewal of licensure or continued licensure by the commission;

11 (10) the Kansas racing and gaming commission, or a designee of the  
12 commission, and the request is accompanied by a statement that the  
13 request is being made to aid in determining qualifications of the following  
14 under the Kansas expanded lottery act: (A) Lottery gaming facility  
15 managers and prospective managers, racetrack gaming facility managers  
16 and prospective managers, licensees and certificate holders; and (B) their  
17 officers, directors, employees, owners, agents and contractors;

18 (11) the Kansas sentencing commission;

19 (12) the state gaming agency, and the request is accompanied by a  
20 statement that the request is being made to aid in determining  
21 qualifications: (A) To be an employee of the state gaming agency; or (B)  
22 to be an employee of a tribal gaming commission or to hold a license  
23 issued pursuant to a tribal-gaming compact;

24 (13) the Kansas securities commissioner or a designee of the  
25 commissioner, and the request is accompanied by a statement that the  
26 request is being made in conjunction with an application for registration as  
27 a broker-dealer, agent, investment adviser or investment adviser  
28 representative by such agency and the application was submitted by the  
29 person whose record has been expunged;

30 (14) the Kansas commission on peace officers' standards and training  
31 and the request is accompanied by a statement that the request is being  
32 made to aid in determining certification eligibility as a law enforcement  
33 officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto;

34 (15) a law enforcement agency and the request is accompanied by a  
35 statement that the request is being made to aid in determining eligibility  
36 for employment as a law enforcement officer as defined by K.S.A. 22-  
37 2202, and amendments thereto;

38 (16) the attorney general and the request is accompanied by a  
39 statement that the request is being made to aid in determining  
40 qualifications for a license to carry a concealed weapon pursuant to the  
41 personal and family protection act; or

42 (17) the Kansas bureau of investigation for the purposes of:

43 (A) Completing a person's criminal history record information within



1 the central repository, in accordance with K.S.A. 22-4701 et seq., and  
2 amendments thereto; or

3 (B) providing information or documentation to the federal bureau of  
4 investigation, in connection with the national instant criminal background  
5 check system, to determine a person's qualification to possess a firearm.

6 ~~(m)~~ (l) The provisions of subsection ~~(l)(17)~~ (k)(17) shall apply to  
7 records created prior to, on and after July 1, 2011.

8 Sec. 2. K.S.A. 2013 Supp. 21-6614 ~~is~~ **and 21-6614d are** hereby  
9 repealed.

10 Sec. 3. This act shall take effect and be in force from and after its  
11 publication in the statute book.