

Substitute for HOUSE BILL No. 2159

By Committee on Judiciary

2-24

1 AN ACT concerning driving; relating to convictions and diversions;
2 expungement of driving under the influence and other driving offenses;
3 amending K.S.A. 2014 Supp. 12-4516 and 21-6614 and repealing the
4 existing sections; also repealing K.S.A. 2014 Supp. 12-4516b and 21-
5 6614e.

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

8 Section 1. K.S.A. 2014 Supp. 12-4516 is hereby amended to read as
9 follows: 12-4516. (a) (1) Except as provided in subsections (b), (c), (d), (e)
10 and (f), any person who has been convicted of a violation of a city
11 ordinance of this state may petition the convicting court for the
12 expungement of such conviction and related arrest records if three or more
13 years have elapsed since the person:

14 (A) Satisfied the sentence imposed; or

15 (B) was discharged from probation, parole or a suspended sentence.

16 (2) Except as provided in subsections (b), (c), (d), (e) and (f), any
17 person who has fulfilled the terms of a diversion agreement based on a
18 violation of a city ordinance of this state may petition the court for the
19 expungement of such diversion agreement and related arrest records if
20 three or more years have elapsed since the terms of the diversion
21 agreement were fulfilled.

22 (b) Any person convicted of a violation of any ordinance that is
23 prohibited by either ~~subsection (a) or (b)~~ of K.S.A. 2014 Supp. 12-
24 16,134(a) or (b), and amendments thereto, and which was adopted prior to
25 July 1, 2014, or who entered into a diversion agreement in lieu of further
26 criminal proceedings for such violation, may petition the convicting court
27 for the expungement of such conviction or diversion agreement and related
28 arrest records.

29 (c) Any person convicted of the violation of a city ordinance which
30 would also constitute a violation of K.S.A. 21-3512, prior to its repeal, or a
31 violation of K.S.A. 2014 Supp. 21-6419, and amendments thereto, or who
32 entered into a diversion agreement in lieu of further criminal proceedings
33 for such violation, may petition the convicting court for the expungement
34 of such conviction or diversion agreement and related arrest records if:

35 (1) One or more years have elapsed since the person satisfied the
36 sentence imposed or the terms of a diversion agreement or was discharged

1 from probation, parole, conditional release or a suspended sentence; and

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

8 (d) No person may petition for expungement until five or more years
9 have elapsed since the person satisfied the sentence imposed or the terms
10 of a diversion agreement or was discharged from probation, parole,
11 conditional release or a suspended sentence, if such person was convicted
12 of the violation of a city ordinance which would also constitute:

13 (1) Vehicular homicide, as defined by K.S.A. 21-3405, prior to its
14 repeal, or K.S.A. 2014 Supp. 21-5406, and amendments thereto;

15 (2) driving while the privilege to operate a motor vehicle on the
16 public highways of this state has been canceled, suspended or revoked, as
17 prohibited by K.S.A. 8-262, and amendments thereto;

18 (3) perjury resulting from a violation of K.S.A. 8-261a, and
19 amendments thereto;

20 (4) a violation of the provisions of ~~the fifth clause of~~ K.S.A. 8-
21 142 *Fifth*, and amendments thereto, relating to fraudulent applications;

22 (5) any crime punishable as a felony wherein a motor vehicle was
23 used in the perpetration of such crime;

24 (6) failing to stop at the scene of an accident and perform the duties
25 required by K.S.A. 8-1602, 8-1603, prior to its repeal, or 8-1604, and
26 amendments thereto;

27 (7) a violation of the provisions of K.S.A. 40-3104, and amendments
28 thereto, relating to motor vehicle liability insurance coverage; or

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

30 (e) **(1)** No person may petition for expungement until ~~40~~ *five* or more
31 years have elapsed since the person satisfied the sentence imposed or the
32 terms of a diversion agreement or was discharged from probation, parole,
33 conditional release or a suspended sentence, if such person was convicted
34 of ~~the~~ **a first** violation of a city ordinance which would also constitute a
35 **first** violation of K.S.A. 8-1567 or K.S.A. 2014 Supp. 8-1025, and
36 amendments thereto.

37 **(2)** *No person may petition for expungement until 10 or more years*
38 *have elapsed since the person satisfied the sentence imposed or was*
39 *discharged from probation, parole, conditional release or a suspended*
40 *sentence, if such person was convicted of a second or subsequent*
41 *violation of a city ordinance which would also constitute a second or*
42 *subsequent violation of K.S.A. 8-1567 or K.S.A. 2014 Supp. 8-1025, and*
43 *amendments thereto.*

1 (f) There shall be no expungement of convictions or diversions for a
2 violation of a city ordinance which would also constitute a violation of
3 K.S.A. 8-2,144, and amendments thereto.

4 (g) (1) When a petition for expungement is filed, the court shall set a
5 date for a hearing of such petition and shall cause notice of such hearing to
6 be given to the prosecuting attorney and the arresting law enforcement
7 agency. The petition shall state the:

8 (A) Defendant's full name;

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

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

12 (D) crime for which the defendant was arrested, convicted or
13 diverted;

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

15 (F) identity of the convicting court, arresting law enforcement agency
16 or diverting authority.

17 (2) A municipal court may prescribe a fee to be charged as costs for a
18 person petitioning for an order of expungement pursuant to this section.

19 (3) Any person who may have relevant information about the
20 petitioner may testify at the hearing. The court may inquire into the
21 background of the petitioner and shall have access to any reports or
22 records relating to the petitioner that are on file with the secretary of
23 corrections or the prisoner review board.

24 (h) At the hearing on the petition, the court shall order the petitioner's
25 arrest record, conviction or diversion expunged if the court finds that:

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

29 (2) the circumstances and behavior of the petitioner warrant the
30 expungement; and

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

32 (i) When the court has ordered an arrest record, conviction or
33 diversion expunged, the order of expungement shall state the information
34 required to be contained in the petition. The clerk of the court shall send a
35 certified copy of the order of expungement to the Kansas bureau of
36 investigation which shall notify the federal bureau of investigation, the
37 secretary of corrections and any other criminal justice agency which may
38 have a record of the arrest, conviction or diversion. After the order of
39 expungement is entered, the petitioner shall be treated as not having been
40 arrested, convicted or diverted of the crime, except that:

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

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

3 (A) In any application for *licensure as a private detective, private*
4 *detective agency, certification as a firearms trainer pursuant to K.S.A.*
5 *2014 Supp. 75-7b21, and amendments thereto, or employment as a*
6 *detective with a private detective agency, as defined by K.S.A. 75-7b01,*
7 *and amendments thereto; as security personnel with a private patrol*
8 *operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with*
9 *an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of*
10 *the department for ~~children and families~~ aging and disability services;*

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

13 (C) to aid in determining the petitioner's qualifications for
14 employment with the Kansas lottery or for work in sensitive areas within
15 the Kansas lottery as deemed appropriate by the executive director of the
16 Kansas lottery;

17 (D) to aid in determining the petitioner's qualifications for executive
18 director of the Kansas racing and gaming commission, for employment
19 with the commission or for work in sensitive areas in parimutuel racing as
20 deemed appropriate by the executive director of the commission, or to aid
21 in determining qualifications for licensure or renewal of licensure by the
22 commission;

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

28 (F) upon application for a commercial driver's license under K.S.A.
29 8-2,125 through 8-2,142, and amendments thereto;

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

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

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

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

40 (K) for applications received on and after July 1, 2006, to aid in
41 determining the petitioner's qualifications for a license to carry a concealed
42 weapon pursuant to the personal and family protection act, K.S.A. 2014
43 Supp. 75-7c01 et seq., and amendments thereto;

1 (3) the court, in the order of expungement, may specify other
2 circumstances under which the arrest, conviction or diversion is to be
3 disclosed; and

4 (4) the conviction may be disclosed in a subsequent prosecution for
5 an offense which requires as an element of such offense a prior conviction
6 of the type expunged.

7 (j) Whenever a person is convicted of an ordinance violation, pleads
8 guilty and pays a fine for such a violation, is placed on parole or probation
9 or is granted a suspended sentence for such a violation, the person shall be
10 informed of the ability to expunge the arrest records or conviction.
11 Whenever a person enters into a diversion agreement, the person shall be
12 informed of the ability to expunge the diversion.

13 (k) Subject to the disclosures required pursuant to subsection (i), in
14 any application for employment, license or other civil right or privilege, or
15 any appearance as a witness, a person whose arrest records, conviction or
16 diversion of an offense has been expunged under this statute may state that
17 such person has never been arrested, convicted or diverted of such offense.

18 (l) Whenever the record of any arrest, conviction or diversion has
19 been expunged under the provisions of this section or under the provisions
20 of any other existing or former statute, the custodian of the records of
21 arrest, conviction, diversion and incarceration relating to that crime shall
22 not disclose the existence of such records, except when requested by:

23 (1) The person whose record was expunged;

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

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

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

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

38 (6) a prosecuting attorney, and such request is accompanied by a
39 statement that the request is being made in conjunction with a prosecution
40 of an offense that requires a prior conviction as one of the elements of such
41 offense;

42 (7) the supreme court, the clerk or disciplinary administrator thereof,
43 the state board for admission of attorneys or the state board for discipline

1 of attorneys, and the request is accompanied by a statement that the
2 request is being made in conjunction with an application for admission, or
3 for an order of reinstatement, to the practice of law in this state by the
4 person whose record has been expunged;

5 (8) the Kansas lottery, and the request is accompanied by a statement
6 that the request is being made to aid in determining qualifications for
7 employment with the Kansas lottery or for work in sensitive areas within
8 the Kansas lottery as deemed appropriate by the executive director of the
9 Kansas lottery;

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

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

24 (11) the state gaming agency, and the request is accompanied by a
25 statement that the request is being made to aid in determining
26 qualifications: (A) To be an employee of the state gaming agency; or (B)
27 to be an employee of a tribal gaming commission or to hold a license
28 issued pursuant to a tribal-state gaming compact;

29 (12) the Kansas securities commissioner, or a designee of the
30 commissioner, and the request is accompanied by a statement that the
31 request is being made in conjunction with an application for registration as
32 a broker-dealer, agent, investment adviser or investment adviser
33 representative by such agency and the application was submitted by the
34 person whose record has been expunged;

35 (13) the attorney general, and the request is accompanied by a
36 statement that the request is being made to aid in determining
37 qualifications for a license to carry a concealed weapon pursuant to the
38 personal and family protection act;

39 (14) the Kansas sentencing commission;

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

1 (16) a law enforcement agency and the request is accompanied by a
2 statement that the request is being made to aid in determining eligibility
3 for employment as a law enforcement officer as defined by K.S.A. 22-
4 2202, and amendments thereto.

5 Sec. 2. K.S.A. 2014 Supp. 21-6614 is hereby amended to read as
6 follows: 21-6614. (a) (1) Except as provided in subsections (b), (c), (d),
7 (e) and (f), any person convicted in this state of a traffic infraction,
8 cigarette or tobacco infraction, misdemeanor or a class D or E felony, or
9 for crimes committed on or after July 1, 1993, ~~nondrug crimes any~~
10 *nongrid felony or felony* ranked in severity levels 6 through 10 *of the*
11 *nondrug grid*, or for crimes committed on or after July 1, 1993, but prior to
12 July 1, 2012, any felony ranked in severity level 4 of the drug grid, or for
13 crimes committed on or after July 1, 2012, any felony ranked in severity
14 level 5 of the drug grid may petition the convicting court for the
15 expungement of such conviction or related arrest records if three or more
16 years have elapsed since the person: (A) Satisfied the sentence imposed; or
17 (B) was discharged from probation, a community correctional services
18 program, parole, postrelease supervision, conditional release or a
19 suspended sentence.

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

25 (b) Any person convicted of prostitution, as defined in K.S.A. 21-
26 3512, prior to its repeal, convicted of a violation of K.S.A. 2014 Supp. 21-
27 6419, and amendments thereto, or who entered into a diversion agreement
28 in lieu of further criminal proceedings for such violation, may petition the
29 convicting court for the expungement of such conviction or diversion
30 agreement and related arrest records if:

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

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

41 (c) Except as provided in subsections (e) and (f), no person may
42 petition for expungement until five or more years have elapsed since the
43 person satisfied the sentence imposed or the terms of a diversion

1 agreement or was discharged from probation, a community correctional
2 services program, parole, postrelease supervision, conditional release or a
3 suspended sentence, if such person was convicted of a class A, B or C
4 felony, or for crimes committed on or after July 1, 1993, if convicted of an
5 off-grid felony or any ~~nondrug-crime~~ *felony* ranked in severity levels 1
6 through 5 *of the nondrug grid*, or for crimes committed on or after July 1,
7 1993, but prior to July 1, 2012, any felony ranked in severity levels 1
8 through 3 of the drug grid, or for crimes committed on or after July 1,
9 2012, any felony ranked in severity levels 1 through 4 of the drug grid, or:

10 (1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its
11 repeal, or K.S.A. 2014 Supp. 21-5406, and amendments thereto, or as
12 prohibited by any law of another state which is in substantial conformity
13 with that statute;

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

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

22 (4) violating the provisions of ~~the fifth clause of~~ K.S.A. 8-142 *Fifth*,
23 and amendments thereto, relating to fraudulent applications or violating
24 the provisions of a law of another state which is in substantial conformity
25 with that statute;

26 (5) any crime punishable as a felony wherein a motor vehicle was
27 used in the perpetration of such crime;

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

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

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

35 (d) **(1)** No person may petition for expungement until ~~seven~~ *five*
36 or more years have elapsed since the person satisfied the sentence imposed or
37 the terms of a diversion agreement or was discharged from probation, a
38 community correctional services program, parole, postrelease supervision,
39 conditional release or a suspended sentence, if such person was convicted
40 of a *first* violation of K.S.A. 8-1567 or K.S.A. 2014 Supp. 8-1025, and
41 amendments thereto, including any diversion for such violation.

42 **(2)** *No person may petition for expungement until 10 or more years*
43 *have elapsed since the person satisfied the sentence imposed or was*

1 *discharged from probation, a community correctional services program,*
2 *parole, postrelease supervision, conditional release or a suspended*
3 *sentence, if such person was convicted of a second or subsequent*
4 *violation of K.S.A. 8-1567 or K.S.A. 2014 Supp. 8-1025, and*
5 *amendments thereto.*

6 (e) There shall be no expungement of convictions for the following
7 offenses or of convictions for an attempt to commit any of the following
8 offenses:

9 (1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.
10 2014 Supp. 21-5503, and amendments thereto;

11 (2) indecent liberties with a child or aggravated indecent liberties
12 with a child, as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal,
13 or K.S.A. 2014 Supp. 21-5506, and amendments thereto;

14 (3) criminal sodomy, as defined in ~~subsection (a)(2) or (a)(3) of~~
15 ~~K.S.A. 21-3505(a)(2) or (a)(3), prior to its repeal, or subsection (a)(3) or~~
16 ~~(a)(4) of K.S.A. 2014 Supp. 21-5504(a)(3) or (a)(4), and amendments~~
17 ~~thereto;~~

18 (4) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior
19 to its repeal, or K.S.A. 2014 Supp. 21-5504, and amendments thereto;

20 (5) indecent solicitation of a child or aggravated indecent solicitation
21 of a child, as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal,
22 or K.S.A. 2014 Supp. 21-5508, and amendments thereto;

23 (6) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior
24 to its repeal, or K.S.A. 2014 Supp. 21-5510, and amendments thereto;

25 (7) aggravated incest, as defined in K.S.A. 21-3603, prior to its
26 repeal, or K.S.A. 2014 Supp. 21-5604, and amendments thereto;

27 (8) endangering a child or aggravated endangering a child, as defined
28 in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2014 Supp.
29 21-5601, and amendments thereto;

30 (9) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal,
31 or K.S.A. 2014 Supp. 21-5602, and amendments thereto;

32 (10) capital murder, as defined in K.S.A. 21-3439, prior to its repeal,
33 or K.S.A. 2014 Supp. 21-5401, and amendments thereto;

34 (11) murder in the first degree, as defined in K.S.A. 21-3401, prior to
35 its repeal, or K.S.A. 2014 Supp. 21-5402, and amendments thereto;

36 (12) murder in the second degree, as defined in K.S.A. 21-3402, prior
37 to its repeal, or K.S.A. 2014 Supp. 21-5403, and amendments thereto;

38 (13) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to
39 its repeal, or K.S.A. 2014 Supp. 21-5404, and amendments thereto;

40 (14) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to
41 its repeal, or K.S.A. 2014 Supp. 21-5405, and amendments thereto;

42 (15) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal,
43 or K.S.A. 2014 Supp. 21-5505, and amendments thereto, when the victim

1 was less than 18 years of age at the time the crime was committed;

2 (16) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to
3 its repeal, or K.S.A. 2014 Supp. 21-5505, and amendments thereto;

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

6 (18) any conviction for any offense in effect at any time prior to July
7 1, 2011, that is comparable to any offense as provided in this subsection.

8 (f) Notwithstanding any other law to the contrary, for any offender
9 who is required to register as provided in the Kansas offender registration
10 act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no
11 expungement of any conviction or any part of the offender's criminal
12 record while the offender is required to register as provided in the Kansas
13 offender registration act.

14 (g) (1) When a petition for expungement is filed, the court shall set a
15 date for a hearing of such petition and shall cause notice of such hearing to
16 be given to the prosecutor and the arresting law enforcement agency. The
17 petition shall state the:

18 (A) Defendant's full name;

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

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

22 (D) crime for which the defendant was arrested, convicted or
23 diverted;

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

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

27 (2) Except as otherwise provided by law, a petition for expungement
28 shall be accompanied by a docket fee in the amount of ~~\$100~~ \$176. On and
29 after July 1, 2013, through July 1, 2015, the supreme court may impose a
30 charge, not to exceed \$19 per case, to fund the costs of non-judicial
31 personnel. The charge established in this section shall be the only fee
32 collected or moneys in the nature of a fee collected for the case. Such
33 charge shall only be established by an act of the legislature and no other
34 authority is established by law or otherwise to collect a fee.

35 (3) All petitions for expungement shall be docketed in the original
36 criminal action. Any person who may have relevant information about the
37 petitioner may testify at the hearing. The court may inquire into the
38 background of the petitioner and shall have access to any reports or
39 records relating to the petitioner that are on file with the secretary of
40 corrections or the prisoner review board.

41 (h) At the hearing on the petition, the court shall order the petitioner's
42 arrest record, conviction or diversion expunged if the court finds that:

43 (1) The petitioner has not been convicted of a felony in the past two

1 years and no proceeding involving any such crime is presently pending or
2 being instituted against the petitioner;

3 (2) the circumstances and behavior of the petitioner warrant the
4 expungement; and

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

6 (i) When the court has ordered an arrest record, conviction or
7 diversion expunged, the order of expungement shall state the information
8 required to be contained in the petition. The clerk of the court shall send a
9 certified copy of the order of expungement to the Kansas bureau of
10 investigation which shall notify the federal bureau of investigation, the
11 secretary of corrections and any other criminal justice agency which may
12 have a record of the arrest, conviction or diversion. After the order of
13 expungement is entered, the petitioner shall be treated as not having been
14 arrested, convicted or diverted of the crime, except that:

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

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

20 (A) In any application for licensure as a private detective, private
21 detective agency, certification as a firearms trainer pursuant to K.S.A.
22 2014 Supp. 75-7b21, and amendments thereto, or employment as a
23 detective with a private detective agency, as defined by K.S.A. 75-7b01,
24 and amendments thereto; as security personnel with a private patrol
25 operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with
26 an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of
27 the Kansas department for aging and disability services;

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

30 (C) to aid in determining the petitioner's qualifications for
31 employment with the Kansas lottery or for work in sensitive areas within
32 the Kansas lottery as deemed appropriate by the executive director of the
33 Kansas lottery;

34 (D) to aid in determining the petitioner's qualifications for executive
35 director of the Kansas racing and gaming commission, for employment
36 with the commission or for work in sensitive areas in parimutuel racing as
37 deemed appropriate by the executive director of the commission, or to aid
38 in determining qualifications for licensure or renewal of licensure by the
39 commission;

40 (E) to aid in determining the petitioner's qualifications for the
41 following under the Kansas expanded lottery act: (i) Lottery gaming
42 facility manager or prospective manager, racetrack gaming facility
43 manager or prospective manager, licensee or certificate holder; or (ii) an

1 officer, director, employee, owner, agent or contractor thereof;

2 (F) upon application for a commercial driver's license under K.S.A.
3 8-2,125 through 8-2,142, and amendments thereto;

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

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

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

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

14 (K) for applications received on and after July 1, 2006, to aid in
15 determining the petitioner's qualifications for a license to carry a concealed
16 weapon pursuant to the personal and family protection act, K.S.A. 2014
17 Supp. 75-7c01 et seq., and amendments thereto;

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

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

23 (5) upon commitment to the custody of the secretary of corrections,
24 any previously expunged record in the possession of the secretary of
25 corrections may be reinstated and the expungement disregarded, and the
26 record continued for the purpose of the new commitment.

27 (j) Whenever a person is convicted of a crime, pleads guilty and pays
28 a fine for a crime, is placed on parole, postrelease supervision or
29 probation, is assigned to a community correctional services program, is
30 granted a suspended sentence or is released on conditional release, the
31 person shall be informed of the ability to expunge the arrest records or
32 conviction. Whenever a person enters into a diversion agreement, the
33 person shall be informed of the ability to expunge the diversion.

34 (k) (1) Subject to the disclosures required pursuant to subsection (i),
35 in any application for employment, license or other civil right or privilege,
36 or any appearance as a witness, a person whose arrest records, conviction
37 or diversion of a crime has been expunged under this statute may state that
38 such person has never been arrested, convicted or diverted of such crime.

39 (2) Notwithstanding the provisions of subsection (k)(1), and except as
40 provided in ~~subsection (a)(3)(A)~~ of K.S.A. 2014 Supp. 21-6304(a)(3)(A),
41 and amendments thereto, the expungement of a prior felony conviction
42 does not relieve the individual of complying with any state or federal law
43 relating to the use, shipment, transportation, receipt or possession of

1 firearms by persons previously convicted of a felony.

2 (1) Whenever the record of any arrest, conviction or diversion has
3 been expunged under the provisions of this section or under the provisions
4 of any other existing or former statute, the custodian of the records of
5 arrest, conviction, diversion and incarceration relating to that crime shall
6 not disclose the existence of such records, except when requested by:

7 (1) The person whose record was expunged;

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

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

14 (4) the secretary for aging and disability services, or a designee of the
15 secretary, for the purpose of obtaining information relating to employment
16 in an institution, as defined in K.S.A. 76-12a01, and amendments thereto,
17 of the Kansas department for aging and disability services of any person
18 whose record has been expunged;

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

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

24 (7) the supreme court, the clerk or disciplinary administrator thereof,
25 the state board for admission of attorneys or the state board for discipline
26 of attorneys, and the request is accompanied by a statement that the
27 request is being made in conjunction with an application for admission, or
28 for an order of reinstatement, to the practice of law in this state by the
29 person whose record has been expunged;

30 (8) the Kansas lottery, and the request is accompanied by a statement
31 that the request is being made to aid in determining qualifications for
32 employment with the Kansas lottery or for work in sensitive areas within
33 the Kansas lottery as deemed appropriate by the executive director of the
34 Kansas lottery;

35 (9) the governor or the Kansas racing and gaming commission, or a
36 designee of the commission, and the request is accompanied by a
37 statement that the request is being made to aid in determining
38 qualifications for executive director of the commission, for employment
39 with the commission, for work in sensitive areas in parimutuel racing as
40 deemed appropriate by the executive director of the commission or for
41 licensure, renewal of licensure or continued licensure by the commission;

42 (10) the Kansas racing and gaming commission, or a designee of the
43 commission, and the request is accompanied by a statement that the

1 request is being made to aid in determining qualifications of the following
2 under the Kansas expanded lottery act: (A) Lottery gaming facility
3 managers and prospective managers, racetrack gaming facility managers
4 and prospective managers, licensees and certificate holders; and (B) their
5 officers, directors, employees, owners, agents and contractors;

6 (11) the Kansas sentencing commission;

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

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

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

22 (15) a law enforcement agency and the request is accompanied by a
23 statement that the request is being made to aid in determining eligibility
24 for employment as a law enforcement officer as defined by K.S.A. 22-
25 2202, and amendments thereto;

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

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

31 (A) Completing a person's criminal history record information within
32 the central repository, in accordance with K.S.A. 22-4701 et seq., and
33 amendments thereto; or

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

37 (m) The provisions of subsection (l)(17) shall apply to records
38 created prior to, on and after July 1, 2011.

39 Sec. 3. K.S.A. 2014 Supp. 12-4516, 12-4516b, 21-6614 and 21-6614e
40 are hereby repealed.

41 Sec. 4. This act shall take effect and be in force from and after its
42 publication in the statute book.