

HOUSE BILL No. 2347

By Committee on Transportation

2-13

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to expungement of traffic infractions; amending K.S.A. 2014 Supp. 21-
3 6614 and repealing the existing section; also repealing K.S.A. 2014
4 Supp. 21-6614e.
5

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

7 Section 1. K.S.A. 2014 Supp. 21-6614 is hereby amended to read as
8 follows: 21-6614. (a) (1) Except as provided in subsections (b), (c), (d),
9 (e) ~~and~~, (f) *and* (g), any person convicted in this state of a traffic
10 infraction, cigarette or tobacco infraction, misdemeanor or a class D or E
11 felony, or for crimes committed on or after July 1, 1993, ~~nondrug crimes~~
12 *any nongrid felony or felony* ranked in severity levels 6 through 10 *of the*
13 *nondrug grid*, 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), (e) ~~and~~, (f) *and* (g),
23 any person who has fulfilled the terms of a diversion agreement may
24 petition the district court for the expungement of such diversion agreement
25 and related arrest records if three or more years have elapsed since the
26 terms of 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. 2014 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) *Any person convicted in this state of a traffic infraction may*
8 *petition the convicting court for the expungement of such conviction and*
9 *related arrest records if: (1) Two or more years have elapsed since the*
10 *person satisfied the sentence imposed; and (2) the person was less than 21*
11 *years of age when the traffic infraction was committed.*

12 (e) (d) Except as provided in subsections ~~(e)~~ and (f) and (g), no
13 person may petition for expungement until five or more years have elapsed
14 since the person satisfied the sentence imposed or the terms of a diversion
15 agreement or was discharged from probation, a community correctional
16 services program, parole, postrelease supervision, conditional release or a
17 suspended sentence, if such person was convicted of a class A, B or C
18 felony, or for crimes committed on or after July 1, 1993, if convicted of an
19 off-grid felony or any ~~nondrug-crime~~ *felony* ranked in severity levels 1
20 through 5 of the *nondrug grid*, or for crimes committed on or after July 1,
21 1993, but prior to July 1, 2012, any felony ranked in severity levels 1
22 through 3 of the drug grid, or for crimes committed on or after July 1,
23 2012, any felony ranked in severity levels 1 through 4 of the drug grid, or:

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

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

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

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

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

42 (6) failing to stop at the scene of an accident and perform the duties
43 required by K.S.A. 8-1602, 8-1603, prior to its repeal, or 8-1604, and

1 amendments thereto, or required by a law of another state which is in
2 substantial conformity with those statutes;

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

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

6 ~~(d)~~ (e) No person may petition for expungement until seven or more
7 years have elapsed since the person satisfied the sentence imposed or the
8 terms of a diversion agreement or was discharged from probation, a
9 community correctional services program, parole, postrelease supervision,
10 conditional release or a suspended sentence, if such person was convicted
11 of a violation of K.S.A. 8-1567 or K.S.A. 2014 Supp. 8-1025, and
12 amendments thereto, including any diversion for such violation.

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

16 (1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.
17 2014 Supp. 21-5503, and amendments thereto;

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

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

25 (4) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior
26 to its repeal, or K.S.A. 2014 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. 2014 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. 2014 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. 2014 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. 2014 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. 2014 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. 2014 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. 2014 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. 2014 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. 2014 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. 2014 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. 2014 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. 2014 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)~~ (g) 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)~~ (h) (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~~ \$176. On and
36 after July 1, 2013, through July 1, 2015, the supreme court may impose a
37 charge, not to exceed \$19 per case, to fund the costs of non-judicial
38 personnel. The charge established in this section shall be the only fee
39 collected or moneys in the nature of a fee collected for the case. Such
40 charge shall only be established by an act of the legislature and no other
41 authority is established by law or otherwise to collect a fee.

42 (3) All petitions for expungement shall be docketed in the original
43 criminal action. Any person who may have relevant information about the

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

5 ~~(h)~~ (i) At the hearing on the petition, the court shall order the
6 petitioner's arrest record, conviction or diversion expunged if the court
7 finds that:

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

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

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

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

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

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

28 (A) In any application for licensure as a private detective, private
29 detective agency, certification as a firearms trainer pursuant to K.S.A.
30 2014 Supp. 75-7b21, and amendments thereto, or employment as a
31 detective with a private detective agency, as defined by K.S.A. 75-7b01,
32 and amendments thereto; as security personnel with a private patrol
33 operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with
34 an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of
35 the Kansas department for aging and disability services;

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

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

42 (D) to aid in determining the petitioner's qualifications for executive
43 director of the Kansas racing and gaming commission, for employment

1 with the commission or for work in sensitive areas in parimutuel racing as
2 deemed appropriate by the executive director of the commission, or to aid
3 in determining qualifications for licensure or renewal of licensure by the
4 commission;

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

10 (F) upon application for a commercial driver's license under K.S.A.
11 8-2,125 through 8-2,142, and amendments thereto;

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

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

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

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

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

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

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

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

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

42 ~~(k)~~ (l) (1) Subject to the disclosures required pursuant to subsection
43 ~~(j)~~ (j), in any application for employment, license or other civil right or

1 privilege, or any appearance as a witness, a person whose arrest records,
2 conviction or diversion of a crime has been expunged under this statute
3 may state that such person has never been arrested, convicted or diverted
4 of such crime.

5 (2) Notwithstanding the provisions of subsection ~~(k)(1)~~ *(l)(1)*, and
6 except as provided in subsection ~~(a)(3)(A)~~ of K.S.A. 2014 Supp. 21-
7 6304(a)(3)(A), and amendments thereto, the expungement of a prior felony
8 conviction does not relieve the individual of complying with any state or
9 federal law relating to the use, shipment, transportation, receipt or
10 possession of firearms by persons previously convicted of a felony.

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

16 (1) The person whose record was expunged;

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

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

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

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

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

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

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

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

15 (11) the Kansas sentencing commission;

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

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

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

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

35 (16) 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; or

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

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

43 (B) providing information or documentation to the federal bureau of

1 investigation, in connection with the national instant criminal background
2 check system, to determine a person's qualification to possess a firearm.

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

5 Sec. 2. K.S.A. 2014 Supp. 21-6614 and 21-6614e are hereby
6 repealed.

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