

HOUSE BILL No. 2226

By Committee on Judiciary

2-3

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to expungement; requiring certain convictions to be expunged from an
3 offender's record automatically; amending K.S.A. 2020 Supp. 12-4516
4 and 21-6614 and repealing the existing sections.

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

7 Section 1. K.S.A. 2020 Supp. 12-4516 is hereby amended to read as
8 follows: 12-4516. (a) (1) Except as provided in subsections ~~(b), (e)~~, (d), (e)
9 and (f), any ~~person who has been convicted~~ *conviction and related arrest*
10 *records* of a violation of a city ordinance of this state ~~may petition the~~
11 ~~convicting court for the expungement of such conviction and related arrest~~
12 ~~records shall be automatically expunged by the convicting court~~ if three or
13 more years have elapsed since the person *convicted of such offense*:

14 (A) Satisfied the sentence imposed; or

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

16 (2) *The prosecuting attorney in the convicting court shall file a*
17 *petition with the court stating the information described in subsection (g).*
18 *No fee shall be charged for filing a petition pursuant to this paragraph.*
19 *Upon receiving such petition, the court shall order such conviction and*
20 *related arrest records expunged.*

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

27 (b) Any person convicted of a violation of any ordinance that is
28 prohibited by either K.S.A. 2020 Supp. 12-16,134(a) or (b), and
29 amendments thereto, and which was adopted prior to July 1, 2014, or who
30 entered into a diversion agreement in lieu of further criminal proceedings
31 for such violation, may petition the convicting court for the expungement
32 of such conviction or diversion agreement and related arrest records.

33 (c) Any person convicted of the violation of a city ordinance which
34 would also constitute a violation of K.S.A. 21-3512, prior to its repeal, or a
35 violation of K.S.A. 2020 Supp. 21-6419, and amendments thereto, or who
36 entered into a diversion agreement in lieu of further criminal proceedings

1 for such violation, may petition the convicting court for the expungement
2 of such conviction or diversion agreement and related arrest records if:

3 (1) One or more years have elapsed since the person satisfied the
4 sentence imposed or the terms of a diversion agreement or was discharged
5 from probation, parole, conditional release or a suspended sentence; and

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

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

17 (1) Vehicular homicide, as defined by K.S.A. 21-3405, prior to its
18 repeal, or K.S.A. 2020 Supp. 21-5406, and amendments thereto;

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

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

24 (4) a violation of the provisions of K.S.A. 8-142 *Fifth*, and
25 amendments thereto, relating to fraudulent applications;

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 *K.S.A. 8-1602 or*
30 *8-1604*, and amendments thereto;

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

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

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

40 (2) No person may petition for expungement until 10 or more years
41 have elapsed since the person satisfied the sentence imposed or was
42 discharged from probation, parole, conditional release or a suspended
43 sentence, if such person was convicted of a second or subsequent violation

1 of a city ordinance which would also constitute a second or subsequent
2 violation of K.S.A. 8-1567, and amendments thereto.

3 (3) The provisions of this subsection shall apply to all violations
4 committed on or after July 1, 2006.

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

8 (g) (1) When a petition for expungement is filed *and the conviction is*
9 *not automatically expunged pursuant to subsection (a)*, the court shall set a
10 date for a hearing of such petition and shall cause notice of such hearing to
11 be given to the prosecuting attorney and the arresting law enforcement
12 agency. The petition shall state the:

13 (A) Defendant's full name;

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

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

17 (D) crime for which the defendant was arrested, convicted or
18 diverted;

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

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

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

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

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

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

34 (2) the circumstances and behavior of the petitioner warrant the
35 expungement; and

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

37 (i) When the court has ordered an arrest record, conviction or
38 diversion expunged, the order of expungement shall state the information
39 required to be contained in the petition. The clerk of the court shall send a
40 certified copy of the order of expungement to the Kansas bureau of
41 investigation which shall notify the federal bureau of investigation, the
42 secretary of corrections and any other criminal justice agency which may
43 have a record of the arrest, conviction or diversion. If the case was

1 appealed from municipal court, the clerk of the district court shall send a
2 certified copy of the order of expungement to the municipal court. The
3 municipal court shall order the case expunged once the certified copy of
4 the order of expungement is received. After the order of expungement is
5 entered, the petitioner shall be treated as not having been arrested,
6 convicted or diverted of the crime, except that:

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

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

12 (A) In any application for licensure as a private detective, private
13 detective agency, certification as a firearms trainer pursuant to K.S.A. 75-
14 7b21, and amendments thereto, or employment as a detective with a
15 private detective agency, as defined by K.S.A. 75-7b01, and amendments
16 thereto; as security personnel with a private patrol operator, as defined by
17 K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined
18 in K.S.A. 76-12a01, and amendments thereto, of the Kansas department
19 for aging and disability services;

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

22 (C) to aid in determining the petitioner's qualifications for
23 employment with the Kansas lottery or for work in sensitive areas within
24 the Kansas lottery as deemed appropriate by the executive director of the
25 Kansas lottery;

26 (D) to aid in determining the petitioner's qualifications for executive
27 director of the Kansas racing and gaming commission, for employment
28 with the commission or for work in sensitive areas in parimutuel racing as
29 deemed appropriate by the executive director of the commission, or to aid
30 in determining qualifications for licensure or renewal of licensure by the
31 commission;

32 (E) to aid in determining the petitioner's qualifications for the
33 following under the Kansas expanded lottery act:

34 (i) Lottery gaming facility manager or prospective manager, racetrack
35 gaming facility manager or prospective manager, licensee or certificate
36 holder; or

37 (ii) an officer, director, employee, owner, agent or contractor thereof;

38 (F) upon application for a commercial driver's license under K.S.A.
39 8-2,125 through 8-2,142, and amendments thereto;

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

42 (H) to aid in determining the petitioner's qualifications to be an
43 employee of a tribal gaming commission or to hold a license issued

1 pursuant to a tribal-state gaming compact;

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

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

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

11 (L) for applications received on and after July 1, 2016, to aid in
12 determining the petitioner's qualifications for a license to act as a bail
13 enforcement agent pursuant to K.S.A. 75-7e01 through 75-7e09, *and*
14 *amendments thereto*, and K.S.A. 2020 Supp. 50-6,141, and amendments
15 thereto;

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

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

22 (j) Whenever a person is convicted of an ordinance violation, pleads
23 guilty and pays a fine for such a violation, is placed on parole or probation
24 or is granted a suspended sentence for such a violation, the person shall be
25 informed of the ability to expunge the arrest records or conviction.
26 Whenever a person enters into a diversion agreement, the person shall be
27 informed of the ability to expunge the diversion.

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

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

38 (1) The person whose record was expunged;

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

43 (3) a court, upon a showing of a subsequent conviction of the person

1 whose record has been expunged;

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

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

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

13 (7) the supreme court, the clerk or disciplinary administrator thereof,
14 the state board for admission of attorneys or the state board for discipline
15 of attorneys, and the request is accompanied by a statement that the
16 request is being made in conjunction with an application for admission, or
17 for an order of reinstatement, to the practice of law in this state by the
18 person whose record has been expunged;

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

24 (9) the governor or the Kansas racing and gaming commission, or a
25 designee of the commission, and the request is accompanied by a
26 statement that the request is being made to aid in determining
27 qualifications for executive director of the commission, for employment
28 with the commission, for work in sensitive areas in parimutuel racing as
29 deemed appropriate by the executive director of the commission or for
30 licensure, renewal of licensure or continued licensure by the commission;

31 (10) the Kansas racing and gaming commission, or a designee of the
32 commission, and the request is accompanied by a statement that the
33 request is being made to aid in determining qualifications of the following
34 under the Kansas expanded lottery act:

35 (A) Lottery gaming facility managers and prospective managers,
36 racetrack gaming facility managers and prospective managers, licensees
37 and certificate holders; and

38 (B) their officers, directors, employees, owners, agents and
39 contractors;

40 (11) the state gaming agency, and the request is accompanied by a
41 statement that the request is being made to aid in determining
42 qualifications:

43 (A) To be an employee of the state gaming agency; or

1 (B) to be an employee of a tribal gaming commission or to hold a
2 license issued pursuant to a tribal-state gaming compact;

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

9 (13) the attorney general, and the request is accompanied by a
10 statement that the request is being made to aid in determining
11 qualifications for a license to:

12 (A) Carry a concealed weapon pursuant to the personal and family
13 protection act; or

14 (B) act as a bail enforcement agent pursuant to K.S.A. 75-7e01
15 through 75-7e09, *and amendments thereto*, and K.S.A. 2020 Supp. 50-
16 6,141, and amendments thereto;

17 (14) the Kansas sentencing commission;

18 (15) 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; or

22 (16) 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 Sec. 2. K.S.A. 2020 Supp. 21-6614 is hereby amended to read as
27 follows: 21-6614. (a) (1) Except as provided in subsections ~~(b)~~, (c), (d), (e)
28 and (f), ~~any person convicted~~ *conviction and related arrest records* in this
29 state of a traffic infraction, cigarette or tobacco infraction, misdemeanor or
30 a class D or E felony, or for crimes committed on or after July 1, 1993, any
31 nongrid felony or felony ranked in severity levels 6 through 10 of the
32 nondrug grid, or for crimes committed on or after July 1, 1993, but prior to
33 July 1, 2012, any felony ranked in severity level 4 of the drug grid, or for
34 crimes committed on or after July 1, 2012, any felony ranked in severity
35 level 5 of the drug grid ~~may petition the convicting court for the~~
36 ~~expungement of such conviction or related arrest records shall be~~
37 *automatically expunged by the convicting court* if three or more years have
38 elapsed since the person *convicted of such offense*:

39 (A) Satisfied the sentence imposed; or

40 (B) was discharged from probation, a community correctional
41 services program, parole, postrelease supervision, conditional release or a
42 suspended sentence.

43 (2) *The county or district attorney in the convicting court shall file a*

1 *petition with the court stating the information described in subsection (g).*
2 *No docket fee shall be charged for filing a petition pursuant to this*
3 *paragraph. Upon receiving such petition, the court shall order such*
4 *conviction and related arrest records expunged.*

5 (3) Except as provided in subsections ~~(b)~~, (c), (d), (e) and (f), any
6 person who has fulfilled the terms of a diversion agreement may petition
7 the district court for the expungement of such diversion agreement and
8 related arrest records if three or more years have elapsed since the terms of
9 the diversion agreement were fulfilled.

10 (b) Any person convicted of prostitution, as defined in K.S.A. 21-
11 3512, prior to its repeal, convicted of a violation of K.S.A. 2020 Supp. 21-
12 6419, and amendments thereto, or who entered into a diversion agreement
13 in lieu of further criminal proceedings for such violation, may petition the
14 convicting court for the expungement of such conviction or diversion
15 agreement and related arrest records if:

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

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

26 (c) Except as provided in subsections (e) and (f), no person may
27 petition for expungement until five or more years have elapsed since the
28 person satisfied the sentence imposed or the terms of a diversion
29 agreement or was discharged from probation, a community correctional
30 services program, parole, postrelease supervision, conditional release or a
31 suspended sentence, if such person was convicted of a class A, B or C
32 felony, or for crimes committed on or after July 1, 1993, if convicted of an
33 off-grid felony or any felony ranked in severity levels 1 through 5 of the
34 nondrug grid, or for crimes committed on or after July 1, 1993, but prior to
35 July 1, 2012, any felony ranked in severity levels 1 through 3 of the drug
36 grid, or for crimes committed on or after July 1, 2012, any felony ranked
37 in severity levels 1 through 4 of the drug grid, or:

38 (1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its
39 repeal, or K.S.A. 2020 Supp. 21-5406, and amendments thereto, or as
40 prohibited by any law of another state which is in substantial conformity
41 with that statute;

42 (2) driving while the privilege to operate a motor vehicle on the
43 public highways of this state has been canceled, suspended or revoked, as

1 prohibited by K.S.A. 8-262, and amendments thereto, or as prohibited by
2 any law of another state which is in substantial conformity with that
3 statute;

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

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

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

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

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

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

19 (d) (1) No person may petition for expungement until five or more
20 years have elapsed since the person satisfied the sentence imposed or the
21 terms of a diversion agreement or was discharged from probation, a
22 community correctional services program, parole, postrelease supervision,
23 conditional release or a suspended sentence, if such person was convicted
24 of a first violation of K.S.A. 8-1567, and amendments thereto, including
25 any diversion for such violation.

26 (2) No person may petition for expungement until 10 or more years
27 have elapsed since the person satisfied the sentence imposed or was
28 discharged from probation, a community correctional services program,
29 parole, postrelease supervision, conditional release or a suspended
30 sentence, if such person was convicted of a second or subsequent violation
31 of K.S.A. 8-1567, and amendments thereto.

32 (3) Except as provided further, the provisions of this subsection shall
33 apply to all violations committed on or after July 1, 2006. The provisions
34 of subsection (d)(2) shall not apply to violations committed on or after
35 July 1, 2014, but prior to July 1, 2015.

36 (e) There shall be no expungement of convictions for the following
37 offenses or of convictions for an attempt to commit any of the following
38 offenses:

39 (1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.
40 2020 Supp. 21-5503, and amendments thereto;

41 (2) indecent liberties with a child or aggravated indecent liberties
42 with a child, as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal,
43 or K.S.A. 2020 Supp. 21-5506, and amendments thereto;

- 1 (3) criminal sodomy, as defined in K.S.A. 21-3505(a)(2) or (a)(3),
2 prior to its repeal, or K.S.A. 2020 Supp. 21-5504(a)(3) or (a)(4), and
3 amendments thereto;
- 4 (4) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior
5 to its repeal, or K.S.A. 2020 Supp. 21-5504, and amendments thereto;
- 6 (5) indecent solicitation of a child or aggravated indecent solicitation
7 of a child, as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal,
8 or K.S.A. 2020 Supp. 21-5508, and amendments thereto;
- 9 (6) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior
10 to its repeal, or K.S.A. 2020 Supp. 21-5510, and amendments thereto;
- 11 (7) internet trading in child pornography or aggravated internet
12 trading in child pornography, as defined in K.S.A. 2020 Supp. 21-5514,
13 and amendments thereto;
- 14 (8) aggravated incest, as defined in K.S.A. 21-3603, prior to its
15 repeal, or K.S.A. 2020 Supp. 21-5604, and amendments thereto;
- 16 (9) endangering a child or aggravated endangering a child, as defined
17 in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2020 Supp.
18 21-5601, and amendments thereto;
- 19 (10) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal,
20 or K.S.A. 2020 Supp. 21-5602, and amendments thereto;
- 21 (11) capital murder, as defined in K.S.A. 21-3439, prior to its repeal,
22 or K.S.A. 2020 Supp. 21-5401, and amendments thereto;
- 23 (12) murder in the first degree, as defined in K.S.A. 21-3401, prior to
24 its repeal, or K.S.A. 2020 Supp. 21-5402, and amendments thereto;
- 25 (13) murder in the second degree, as defined in K.S.A. 21-3402, prior
26 to its repeal, or K.S.A. 2020 Supp. 21-5403, and amendments thereto;
- 27 (14) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to
28 its repeal, or K.S.A. 2020 Supp. 21-5404, and amendments thereto;
- 29 (15) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to
30 its repeal, or K.S.A. 2020 Supp. 21-5405, and amendments thereto;
- 31 (16) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal,
32 or K.S.A. 2020 Supp. 21-5505, and amendments thereto, when the victim
33 was less than 18 years of age at the time the crime was committed;
- 34 (17) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to
35 its repeal, or K.S.A. 2020 Supp. 21-5505, and amendments thereto;
- 36 (18) a violation of K.S.A. 8-2,144, and amendments thereto,
37 including any diversion for such violation; or
- 38 (19) any conviction for any offense in effect at any time prior to July
39 1, 2011, that is comparable to any offense as provided in this subsection.
- 40 (f) Notwithstanding any other law to the contrary, for any offender
41 who is required to register as provided in the Kansas offender registration
42 act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no
43 expungement of any conviction or any part of the offender's criminal

1 record while the offender is required to register as provided in the Kansas
2 offender registration act.

3 (g) (1) When a petition for expungement is filed *and the conviction is*
4 *not automatically expunged pursuant to subsection (a)*, 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 prosecutor and the arresting law enforcement agency. The
7 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
16 authority or diverting authority.

17 (2) Except as otherwise provided by law, a petition for expungement
18 shall be accompanied by a docket fee in the amount of \$176. On and after
19 July 1, 2019, through June 30, 2025, the supreme court may impose a
20 charge, not to exceed \$19 per case, to fund the costs of non-judicial
21 personnel. The charge established in this section shall be the only fee
22 collected or moneys in the nature of a fee collected for the case. Such
23 charge shall only be established by an act of the legislature and no other
24 authority is established by law or otherwise to collect a fee.

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

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

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

36 (2) the circumstances and behavior of the petitioner warrant the
37 expungement; and

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

39 (i) When the court has ordered an arrest record, conviction or
40 diversion expunged, the order of expungement shall state the information
41 required to be contained in the petition. The clerk of the court shall send a
42 certified copy of the order of expungement to the Kansas bureau of
43 investigation which shall notify the federal bureau of investigation, the

1 secretary of corrections and any other criminal justice agency which may
2 have a record of the arrest, conviction or diversion. If the case was
3 appealed from municipal court, the clerk of the district court shall send a
4 certified copy of the order of expungement to the municipal court. The
5 municipal court shall order the case expunged once the certified copy of
6 the order of expungement is received. After the order of expungement is
7 entered, the petitioner shall be treated as not having been arrested,
8 convicted or diverted of the crime, except that:

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

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

14 (A) In any application for licensure as a private detective, private
15 detective agency, certification as a firearms trainer pursuant to K.S.A. 75-
16 7b21, and amendments thereto, or employment as a detective with a
17 private detective agency, as defined by K.S.A. 75-7b01, and amendments
18 thereto; as security personnel with a private patrol operator, as defined by
19 K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined
20 in K.S.A. 76-12a01, and amendments thereto, of the Kansas department
21 for aging and disability services;

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

24 (C) to aid in determining the petitioner's qualifications for
25 employment with the Kansas lottery or for work in sensitive areas within
26 the Kansas lottery as deemed appropriate by the executive director of the
27 Kansas lottery;

28 (D) to aid in determining the petitioner's qualifications for executive
29 director of the Kansas racing and gaming commission, for employment
30 with the commission or for work in sensitive areas in parimutuel racing as
31 deemed appropriate by the executive director of the commission, or to aid
32 in determining qualifications for licensure or renewal of licensure by the
33 commission;

34 (E) to aid in determining the petitioner's qualifications for the
35 following under the Kansas expanded lottery act:

36 (i) Lottery gaming facility manager or prospective manager, racetrack
37 gaming facility manager or prospective manager, licensee or certificate
38 holder; or

39 (ii) an officer, director, employee, owner, agent or contractor thereof;

40 (F) upon application for a commercial driver's license under K.S.A.
41 8-2,125 through 8-2,142, and amendments thereto;

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

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

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

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

9 (K) to aid in determining the petitioner's qualifications for a license to
10 carry a concealed weapon pursuant to the personal and family protection
11 act, K.S.A. 75-7c01 et seq., and amendments thereto; or

12 (L) to aid in determining the petitioner's qualifications for a license to
13 act as a bail enforcement agent pursuant to K.S.A. 75-7e01 through 75-
14 7e09 and K.S.A. 2020 Supp. 50-6,141, and amendments thereto;

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

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

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

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

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

36 (2) Notwithstanding the provisions of subsection (k)(1), and except as
37 provided in K.S.A. 2020 Supp. 21-6304(a)(3)(A), and amendments
38 thereto, the expungement of a prior felony conviction does not relieve the
39 individual of complying with any state or federal law relating to the use,
40 shipment, transportation, receipt or possession of firearms by persons
41 previously convicted of a felony.

42 (l) Whenever the record of any arrest, conviction or diversion has
43 been expunged under the provisions of this section or under the provisions

1 of any other existing or former statute, the custodian of the records of
2 arrest, conviction, diversion and incarceration relating to that crime shall
3 not disclose the existence of such records, except when requested by:

4 (1) The person whose record was expunged;

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

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

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

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

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

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

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

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

39 (10) the Kansas racing and gaming commission, or a designee of the
40 commission, and the request is accompanied by a statement that the
41 request is being made to aid in determining qualifications of the following
42 under the Kansas expanded lottery act: (A) Lottery gaming facility
43 managers and prospective managers, racetrack gaming facility managers

1 and prospective managers, licensees and certificate holders; and (B) their
2 officers, directors, employees, owners, agents and contractors;

3 (11) the Kansas sentencing commission;

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

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

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

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

23 (16) the attorney general and the request is accompanied by a
24 statement that the request is being made to aid in determining
25 qualifications for a license to:

26 (A) Carry a concealed weapon pursuant to the personal and family
27 protection act; or

28 (B) act as a bail enforcement agent pursuant to K.S.A. 75-7e01
29 through 75-7e09 and K.S.A. 2020 Supp. 50-6,141, and amendments
30 thereto; or

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

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

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

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

40 Sec. 3. K.S.A. 2020 Supp. 12-4516 and 21-6614 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.