

HOUSE BILL No. 2557

By Committee on Judiciary

1-26

1 AN ACT concerning children and minors; relating to the revised Kansas
2 juvenile justice code; expungement of certain offenses; prohibiting
3 denial of a petition for expungement due to the petitioner's inability to
4 pay outstanding costs, fees, fines or restitution; authorizing
5 expungement if the juvenile has not committed an offense in the
6 previous two years; amending K.S.A. 38-2312 and repealing the
7 existing section.
8

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

10 Section 1. K.S.A. 38-2312 is hereby amended to read as follows: 38-
11 2312. (a) Except as provided in subsections (b) and (c), any records or files
12 specified in this code concerning a juvenile may be expunged upon
13 application to a judge of the court of the county in which the records or
14 files are maintained. The application for expungement may be made by the
15 juvenile, if 18 years of age or older or, if the juvenile is less than 18 years
16 of age, by the juvenile's parent or next friend.

17 (b) There shall be no expungement of records or files concerning acts
18 committed by a juvenile which, if committed by an adult, would constitute
19 a violation of K.S.A. 21-3401, prior to its repeal, or K.S.A. 2021 Supp. 21-
20 5402, and amendments thereto, murder in the first degree; K.S.A. 21-3402,
21 prior to its repeal, or K.S.A. 2021 Supp. 21-5403, and amendments
22 thereto, murder in the second degree; K.S.A. 21-3403, prior to its repeal,
23 or K.S.A. 2021 Supp. 21-5404, and amendments thereto, voluntary
24 manslaughter; K.S.A. 21-3404, prior to its repeal, or K.S.A. 2021 Supp.
25 21-5405, and amendments thereto, involuntary manslaughter; K.S.A. 21-
26 3439, prior to its repeal, or K.S.A. 2021 Supp. 21-5401, and amendments
27 thereto, capital murder; K.S.A. 21-3442, prior to its repeal, or K.S.A. 2021
28 Supp. 21-5405(a)(3) or (a)(5), and amendments thereto, involuntary
29 manslaughter while driving under the influence of alcohol or drugs; K.S.A.
30 21-3502, prior to its repeal, or K.S.A. 2021 Supp. 21-5503, and
31 amendments thereto, rape; K.S.A. 21-3503, prior to its repeal, or K.S.A.
32 2021 Supp. 21-5506(a), and amendments thereto, indecent liberties with a
33 child; K.S.A. 21-3504, prior to its repeal, or K.S.A. 2021 Supp. 21-
34 5506(b), and amendments thereto, aggravated indecent liberties with a
35 child; K.S.A. 21-3506, prior to its repeal, or K.S.A. 2021 Supp. 21-
36 5504(b), and amendments thereto, aggravated criminal sodomy; K.S.A.

1 21-3510, prior to its repeal, or K.S.A. 2021 Supp. 21-5508(a), and
 2 amendments thereto, indecent solicitation of a child; K.S.A. 21-3511, prior
 3 to its repeal, or K.S.A. 2021 Supp. 21-5508(b), and amendments thereto,
 4 aggravated indecent solicitation of a child; K.S.A. 21-3516, prior to its
 5 repeal, or K.S.A. 2021 Supp. 21-5510, and amendments thereto, sexual
 6 exploitation of a child; K.S.A. 2021 Supp. 21-5514(a), and amendments
 7 thereto, internet trading in child pornography; K.S.A. 2021 Supp. 21-
 8 5514(b), and amendments thereto, aggravated internet trading in child
 9 pornography; K.S.A. 21-3603, prior to its repeal, or K.S.A. 2021 Supp. 21-
 10 5604(b), and amendments thereto, aggravated incest; K.S.A. 21-3608,
 11 prior to its repeal, or K.S.A. 2021 Supp. 21-5601(a), and amendments
 12 thereto, endangering a child; K.S.A. 21-3609, prior to its repeal, or K.S.A.
 13 2021 Supp. 21-5602, and amendments thereto, abuse of a child; or which
 14 would constitute an attempt to commit a violation of any of the offenses
 15 specified in this subsection.

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

22 (d) (1) When a petition for expungement is filed, the court shall set a
 23 date for a hearing on the petition and shall give notice thereof to the
 24 county or district attorney. The petition shall state *the*:

- 25 ~~(1)The~~(A) Juvenile's full name;
- 26 ~~(2)the~~(B) full name of the juvenile as reflected in the court record, if
 27 different than ~~(1) subparagraph~~ (A);
- 28 ~~(3)the~~(C) juvenile's sex and date of birth;
- 29 ~~(4)the~~(D) offense for which the juvenile was adjudicated;
- 30 ~~(5)the~~(E) date of the trial; and
- 31 ~~(6)the~~(F) identity of the trial court.

32 (2) Except as otherwise provided by law, a petition for expungement
 33 shall be accompanied by a docket fee in the amount of \$176. On and after
 34 July 1, 2019, through June 30, 2025, the supreme court may impose a
 35 charge, not to exceed \$19 per case, to fund the costs of non-judicial
 36 personnel. All petitions for expungement shall be docketed in the original
 37 action.

38 (3) Any person who may have relevant information about the
 39 petitioner may testify at the hearing. The court may inquire into the
 40 background of the petitioner.

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

- 43 (A) (i) The juvenile has reached 23 years of age or that two years

1 have elapsed since the final discharge;

2 (ii) one year has elapsed since the final discharge for an adjudication
3 concerning acts committed by a juvenile which, if committed by an adult,
4 would constitute a violation of K.S.A. 2021 Supp. 21-6419, and
5 amendments thereto; or

6 (iii) the juvenile is a victim of human trafficking, aggravated human
7 trafficking or commercial sexual exploitation of a child, the adjudication
8 concerned acts committed by the juvenile as a result of such victimization,
9 including, but not limited to, acts which, if committed by an adult, would
10 constitute a violation of K.S.A. 2021 Supp. 21-6203 or 21-6419, and
11 amendments thereto, and the hearing on expungement occurred on or after
12 the date of final discharge. The provisions of this clause shall not allow an
13 expungement of records or files concerning acts described in subsection
14 (b);

15 (B) ~~since the final discharge of the juvenile, in the past two years~~ the
16 juvenile has not been convicted of a felony ~~or of a misdemeanor other than~~
17 ~~a traffic offense~~ or adjudicated as a juvenile offender under the revised
18 Kansas juvenile justice code *for a felony* and no proceedings are pending
19 seeking such a conviction or adjudication; and

20 (C) the circumstances and behavior of the petitioner warrant
21 expungement.

22 (2) ~~The court may require that all court costs, fees and restitution~~
23 ~~shall be paid~~ *shall not deny the petition for expungement due to the*
24 *juvenile's inability to pay outstanding costs, fees, fines or restitution. The*
25 *petitioner's unwillingness, rather than inability, to pay such costs, fees,*
26 *fines or restitution may be considered as a factor in denying the petition*
27 *for expungement. Unless the court orders otherwise, expungement shall*
28 *not release the juvenile from the obligation to pay outstanding costs, fees,*
29 *fines or restitution.*

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

41 (g) A certified copy of any order made pursuant to subsection (a) or
42 (d) shall be sent to the Kansas bureau of investigation, which shall *then*
43 notify every juvenile or criminal justice agency which may possess records

1 or files ordered to be expunged. If the agency fails to comply with the
2 order within a reasonable time after its receipt, such agency may be
3 adjudged in contempt of court and punished accordingly.

4 (h) The court shall inform any juvenile who has been adjudicated a
5 juvenile offender of the provisions of this section.

6 (i) Nothing in this section shall be construed to prohibit the
7 maintenance of information relating to an offense after records or files
8 concerning the offense have been expunged if the information is kept in a
9 manner that does not enable identification of the juvenile.

10 (j) Nothing in this section shall be construed to permit or require
11 expungement of files or records related to a child support order registered
12 pursuant to the revised Kansas juvenile justice code.

13 (k) Whenever the records or files of any adjudication have been
14 expunged under the provisions of this section, the custodian of the records
15 or files of adjudication relating to that offense shall not disclose the
16 existence of such records or files, except when requested by:

17 (1) The person whose record was expunged;

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

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

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

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

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

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

43 (8) the Kansas sentencing commission; or

1 (9) the Kansas bureau of investigation, for the purposes of:

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

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

8 (l) The provisions of subsection (k)(9) shall apply to all records
9 created prior to, on and after July 1, 2011.

10 Sec. 2. K.S.A. 38-2312 is hereby repealed.

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