

SENATE BILL No. 105

By Committee on Judiciary

1-28

1 AN ACT concerning expungement; relating to expungement under the
2 Kansas code of procedure for municipal courts; expungement under the
3 Kansas criminal code; prohibiting denial of a petition for expungement
4 due to the petitioner's inability to pay outstanding costs, fees, fines or
5 restitution; amending K.S.A. 2020 Supp. 12-4516 and 21-6614 and
6 repealing the existing sections.

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

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

15 (A) Satisfied the sentence imposed; or

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

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

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

29 (c) Any person convicted of ~~the~~ a 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. 2020 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. 2020 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 K.S.A. 8-142 *Fifth*, and
21 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 *K.S.A. 8-1602 or*
26 *8-1604*, and 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 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 a first violation of a city ordinance which would also constitute a first
35 violation of K.S.A. 8-1567, and amendments thereto.

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

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

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

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

30 ~~(B)~~(B) the circumstances and behavior of the petitioner warrant the
31 expungement; and

32 ~~(C)~~(C) the expungement is consistent with the public welfare.

33 (2) *The court shall not deny the petition for expungement due to the
34 petitioner's inability to pay outstanding costs, fees, fines or restitution. The
35 petitioner's unwillingness, rather than inability, to pay such costs, fees,
36 fines or restitution may be considered as a factor in denying the petition
37 for expungement.*

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

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

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

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

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

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

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

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

33 (E) to aid in determining the petitioner's qualifications for the
34 following under the Kansas expanded lottery act: (i) Lottery gaming
35 facility manager or prospective manager, racetrack gaming facility
36 manager or prospective manager, licensee or certificate holder; or (ii) an
37 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 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 arrest, conviction or diversion is to be
17 disclosed; ~~and~~

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

21 *(5) the petitioner shall continue to be responsible to fully satisfy any*
22 *outstanding costs, fees, fines and restitution related to the arrest,*
23 *conviction or diversion. For the purpose of collecting such outstanding*
24 *costs, fees, fines or restitution, the following persons shall have access to*
25 ~~*any documents and information regarding the outstanding costs, fees,*~~
26 ~~*fines or restitution*~~ ***the expunged case file*** *notwithstanding any*
27 *expungement:*

28 (A) *The clerk of the court;*

29 (B) *a contracting agent as defined in K.S.A. 12-4119, and*
30 *amendments thereto;*

31 (C) *the petitioner and the petitioner's attorney;*

32 (D) *the beneficiary under an order of restitution as defined in K.S.A.*
33 *12-4119, and amendments thereto, and such beneficiary's attorney; and*

34 (E) *any other person as authorized by a court order if the court finds*
35 *it is necessary for the person to have access to the* ~~*documents and*~~
36 ~~*information*~~ ***expunged case file*** *for the purpose of collecting the*
37 *outstanding costs, fees, fines or restitution.*

38 (j) Whenever a person is convicted of an ordinance violation, pleads
39 guilty and pays a fine for such a violation, is placed on parole or probation
40 or is granted a suspended sentence for such a violation, the person shall be
41 informed of the ability to expunge the arrest records or conviction.
42 Whenever a person enters into a diversion agreement, the person shall be
43 informed of the ability to expunge the diversion.

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

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

11 (1) The person whose record was expunged;

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

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

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

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

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

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

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

40 (9) the governor or the Kansas racing and gaming commission, or a
41 designee of the commission, and the request is accompanied by a
42 statement that the request is being made to aid in determining
43 qualifications for executive director of the commission, for employment

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

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

8 (A) Lottery gaming facility managers and prospective managers,
9 racetrack gaming facility managers and prospective managers, licensees
10 and certificate holders; and

11 (B) their officers, directors, employees, owners, agents and
12 contractors;

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

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

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

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

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

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

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

33 (14) the Kansas sentencing commission;

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

38 (16) a law enforcement agency and the request is accompanied by a
39 statement that the request is being made to aid in determining eligibility
40 for employment as a law enforcement officer as defined by K.S.A. 22-
41 2202, and amendments thereto.

42 (m) *For the purposes of this section, the determination of when the*
43 *person satisfied the sentence imposed excludes the payment of costs, fees,*

1 *fines and restitution.*

2 Sec. 2. K.S.A. 2020 Supp. 21-6614 is hereby amended to read as
3 follows: 21-6614. (a) (1) Except as provided in subsections (b), (c), (d),
4 (e) and (f), any person convicted in this state of a traffic infraction,
5 cigarette or tobacco infraction, misdemeanor or a class D or E felony, or
6 for crimes committed on or after July 1, 1993, any nongrid felony or
7 felony ranked in severity levels 6 through 10 of the nondrug grid, or for
8 crimes committed on or after July 1, 1993, but prior to July 1, 2012, any
9 felony ranked in severity level 4 of the drug grid, or for crimes committed
10 on or after July 1, 2012, any felony ranked in severity level 5 of the drug
11 grid may petition the convicting court for the expungement of such
12 conviction or related arrest records if three or more years have elapsed
13 since the person: (A) Satisfied the sentence imposed; or (B) was
14 discharged from probation, a community correctional services program,
15 parole, postrelease supervision, conditional release or a suspended
16 sentence.

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

22 (b) Any person convicted of prostitution, as defined in K.S.A. 21-
23 3512, prior to its repeal, convicted of a violation of K.S.A. 2020 Supp. 21-
24 6419, and amendments thereto, or who entered into a diversion agreement
25 in lieu of further criminal proceedings for such violation, may petition the
26 convicting court for the expungement of such conviction or diversion
27 agreement and related arrest records if:

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

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

38 (c) Except as provided in subsections (e) and (f), no person may
39 petition for expungement until five or more years have elapsed since the
40 person satisfied the sentence imposed or the terms of a diversion
41 agreement or was discharged from probation, a community correctional
42 services program, parole, postrelease supervision, conditional release or a
43 suspended sentence, if such person was convicted of a class A, B or C

1 felony, or for crimes committed on or after July 1, 1993, if convicted of an
2 off-grid felony or any felony ranked in severity levels 1 through 5 of the
3 nondrug grid, or for crimes committed on or after July 1, 1993, but prior to
4 July 1, 2012, any felony ranked in severity levels 1 through 3 of the drug
5 grid, or for crimes committed on or after July 1, 2012, any felony ranked
6 in severity levels 1 through 4 of the drug grid, or:

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

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

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

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

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. 8-1603, prior to its repeal, or K.S.A. 8-1602 or 8-1604,
26 and amendments thereto, or required by a law of another state which is in
27 substantial conformity with those statutes;

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

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

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

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

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

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

8 (1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.
9 2020 Supp. 21-5503, and amendments thereto;

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

13 (3) criminal sodomy, as defined in K.S.A. 21-3505(a)(2) or (a)(3),
14 prior to its repeal, or K.S.A. 2020 Supp. 21-5504(a)(3) or (a)(4), and
15 amendments thereto;

16 (4) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior
17 to its repeal, or K.S.A. 2020 Supp. 21-5504, and amendments thereto;

18 (5) indecent solicitation of a child or aggravated indecent solicitation
19 of a child, as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal,
20 or K.S.A. 2020 Supp. 21-5508, and amendments thereto;

21 (6) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior
22 to its repeal, or K.S.A. 2020 Supp. 21-5510, and amendments thereto;

23 (7) internet trading in child pornography or aggravated internet
24 trading in child pornography, as defined in K.S.A. 2020 Supp. 21-5514,
25 and amendments thereto;

26 (8) aggravated incest, as defined in K.S.A. 21-3603, prior to its
27 repeal, or K.S.A. 2020 Supp. 21-5604, and amendments thereto;

28 (9) endangering a child or aggravated endangering a child, as defined
29 in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2020 Supp.
30 21-5601, and amendments thereto;

31 (10) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal,
32 or K.S.A. 2020 Supp. 21-5602, and amendments thereto;

33 (11) capital murder, as defined in K.S.A. 21-3439, prior to its repeal,
34 or K.S.A. 2020 Supp. 21-5401, and amendments thereto;

35 (12) murder in the first degree, as defined in K.S.A. 21-3401, prior to
36 its repeal, or K.S.A. 2020 Supp. 21-5402, and amendments thereto;

37 (13) murder in the second degree, as defined in K.S.A. 21-3402, prior
38 to its repeal, or K.S.A. 2020 Supp. 21-5403, and amendments thereto;

39 (14) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to
40 its repeal, or K.S.A. 2020 Supp. 21-5404, and amendments thereto;

41 (15) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to
42 its repeal, or K.S.A. 2020 Supp. 21-5405, and amendments thereto;

43 (16) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal,

1 or K.S.A. 2020 Supp. 21-5505, and amendments thereto, when the victim
2 was less than 18 years of age at the time the crime was committed;

3 (17) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to
4 its repeal, or K.S.A. 2020 Supp. 21-5505, and amendments thereto;

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

7 (19) any conviction for any offense in effect at any time prior to July
8 1, 2011, that is comparable to any offense as provided in this subsection.

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

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

19 (A) Defendant's full name;

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

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

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

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

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

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

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

42 (h) (1) At the hearing on the petition, the court shall order the
43 petitioner's arrest record, conviction or diversion expunged if the court

1 finds that:

2 ~~(+)~~(A) The petitioner has not been convicted of a felony in the past
3 two years and no proceeding involving any such crime is presently
4 pending or being instituted against the petitioner;

5 ~~(-)~~(B) the circumstances and behavior of the petitioner warrant the
6 expungement; and

7 ~~(-)~~(C) the expungement is consistent with the public welfare.

8 (2) *The court shall not deny the petition for expungement due to the*
9 *petitioner's inability to pay outstanding costs, fees, fines or restitution. The*
10 *petitioner's unwillingness, rather than inability, to pay such costs, fees,*
11 *fines or restitution may be considered as a factor in denying the petition*
12 *for expungement.*

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

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

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

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

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

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

1 Kansas lottery;

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

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

13 (F) upon application for a commercial driver's license under K.S.A.
14 8-2,125 through 8-2,142, and amendments thereto;

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

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

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

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

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

28 (L) to aid in determining the petitioner's qualifications for a license to
29 act as a bail enforcement agent pursuant to K.S.A. 75-7e01 through 75-
30 7e09 and K.S.A. 2020 Supp. 50-6,141, and amendments thereto;

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

33 (4) the conviction may be disclosed in a subsequent prosecution for
34 an offense ~~which~~ *that* requires as an element of such offense a prior
35 conviction of the type expunged; ~~and~~

36 (5) upon commitment to the custody of the secretary of corrections,
37 any previously expunged record in the possession of the secretary of
38 corrections may be reinstated and the expungement disregarded, and the
39 record continued for the purpose of the new commitment; *and*

40 (6) *the petitioner shall continue to be responsible to fully satisfy any*
41 *outstanding costs, fees, fines and restitution related to the arrest,*
42 *conviction or diversion. For the purpose of collecting such outstanding*
43 *costs, fees, fines or restitution, the following persons shall have access to*

1 ~~any documents and information regarding the outstanding costs, fees,~~
2 ~~finances or restitution~~ **the expunged case file** notwithstanding any
3 expungement:

4 (A) *The clerk of the court;*

5 (B) *a contracting agent as defined in K.S.A. 20-169, and amendments*
6 *thereto;*

7 (C) *the petitioner and the petitioner's attorney;*

8 (D) *the beneficiary under an order of restitution as defined in K.S.A.*
9 *20-169, and amendments thereto, and such beneficiary's attorney; and*

10 (E) *any other person as authorized by a court order if the court finds*
11 *it is necessary for the person to have access to the* ~~documents and~~
12 ~~information~~ **expunged case file** *for the purpose of collecting the*
13 *outstanding costs, fees, fines or restitution.*

14 (j) Whenever a person is convicted of a crime, pleads guilty and pays
15 a fine for a crime, is placed on parole, postrelease supervision or
16 probation, is assigned to a community correctional services program, is
17 granted a suspended sentence or is released on conditional release, the
18 person shall be informed of the ability to expunge the arrest records or
19 conviction. Whenever a person enters into a diversion agreement, the
20 person shall be informed of the ability to expunge the diversion.

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

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

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

37 (1) The person whose record was expunged;

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

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

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

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

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

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

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

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

29 (10) the Kansas racing and gaming commission, or a designee of the
30 commission, and the request is accompanied by a statement that the
31 request is being made to aid in determining qualifications of the following
32 under the Kansas expanded lottery act: (A) Lottery gaming facility
33 managers and prospective managers, racetrack gaming facility managers
34 and prospective managers, licensees and certificate holders; and (B) their
35 officers, directors, employees, owners, agents and contractors;

36 (11) the Kansas sentencing commission;

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

42 (13) the Kansas securities commissioner or a designee of the
43 commissioner, and the request is accompanied by a statement that the

1 request is being made in conjunction with an application for registration as
2 a broker-dealer, agent, investment adviser or investment adviser
3 representative by such agency and the application was submitted by the
4 person whose record has been expunged;

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

9 (15) a law enforcement agency and the request is accompanied by a
10 statement that the request is being made to aid in determining eligibility
11 for employment as a law enforcement officer as defined by K.S.A. 22-
12 2202, and amendments thereto;

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

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

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

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

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

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

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

30 (n) *For the purposes of this section, the determination of when the*
31 *person satisfied the sentence imposed excludes the payment of costs, fees,*
32 *finis and restitution.*

33 Sec. 3. K.S.A. 2020 Supp. 12-4516 and 21-6614 are hereby repealed.

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