

As Amended by House Committee

Session of 2022

HOUSE BILL No. 2556

By Committee on Judiciary

1-26

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; **expungement under the revised Kansas**
4 **juvenile justice code**; prohibiting denial of a petition for expungement
5 due to the petitioner's inability to pay outstanding costs, fees, fines or
6 restitution; **authorizing expungement of a juvenile adjudication if**
7 **the juvenile has not committed an offense in the previous two**
8 **years**; amending K.S.A. 38-2312 and K.S.A. 2021 Supp. 12-4516 and
9 21-6614 and repealing the existing sections.

10
11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. K.S.A. 2021 Supp. 12-4516 is hereby amended to read as
13 follows: 12-4516. (a) (1) Except as provided in subsections (b), (c), (d), (e)
14 and (f), any person who has been convicted of a violation of a city
15 ordinance of this state may petition the convicting court for the
16 expungement of such conviction and related arrest records if three or more
17 years have elapsed since the person:

18 (A) Satisfied the sentence imposed; or

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

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

26 (b) Any person convicted of a violation of any ordinance that is
27 prohibited by either K.S.A. 2021 Supp. 12-16,134(a) or (b), and
28 amendments thereto, and which was adopted prior to July 1, 2014, or who
29 entered into a diversion agreement in lieu of further criminal proceedings
30 for such violation, may petition the convicting court for the expungement
31 of such conviction or diversion agreement and related arrest records.

32 (c) Any person convicted of ~~the~~ a violation of a city ordinance which
33 would also constitute a violation of K.S.A. 21-3512, prior to its repeal, or a
34 violation of K.S.A. 2021 Supp. 21-6419, and amendments thereto, or who
35 entered into a diversion agreement in lieu of further criminal proceedings
36 for such violation, may petition the convicting court for the expungement

1 of such conviction or diversion agreement and related arrest records if:

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

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

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

16 (1) Vehicular homicide, as defined by K.S.A. 21-3405, prior to its
17 repeal, or K.S.A. 2021 Supp. 21-5406, and amendments thereto;

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

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

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

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

27 (6) failing to stop at the scene of an accident and perform the duties
28 required by K.S.A. ~~8-1602~~, 8-1603, prior to its repeal, or K.S.A. *8-1602 or*
29 *8-1604*, and amendments thereto;

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

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

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

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

1 violation of K.S.A. 8-1567, and amendments thereto.

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

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

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

11 (A) Defendant's full name;

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

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

15 (D) crime for which the defendant was arrested, convicted or
16 diverted;

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

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

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

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

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

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

33 ~~(B)~~(B) the circumstances and behavior of the petitioner warrant the
34 expungement; and

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

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

41 (i) When the court has ordered an arrest record, conviction or
42 diversion expunged, the order of expungement shall state the information
43 required to be contained in the petition. The clerk of the court shall send a

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

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

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

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

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

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

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

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

41 (F) upon application for a commercial driver's license under K.S.A.
42 8-2,125 through 8-2,142, and amendments thereto;

43 (G) to aid in determining the petitioner's qualifications to be an

1 employee of the state gaming agency;

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

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

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

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

14 (L) for applications received on and after July 1, 2016, to aid in
15 determining the petitioner's qualifications for a license to act as a bail
16 enforcement agent pursuant to K.S.A. 75-7e01 through 75-7e09 and
17 K.S.A. 2021 Supp. 50-6,141, and amendments thereto;

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

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

24 (5) *the petitioner shall continue to be responsible for fully satisfying*
25 *any outstanding costs, fees, fines and restitution related to the arrest,*
26 *conviction or diversion. For the purpose of collecting such outstanding*
27 *costs, fees, fines or restitution, the following persons shall have access to*
28 *the expunged case filed notwithstanding any expungement:*

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

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

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

33 (D) *the beneficiary under an order of restitution as defined in K.S.A.*
34 *12-4119, and amendments thereto, and such beneficiary's attorney; and*

35 (E) *any other person as authorized by a court order if the court finds*
36 *it is necessary for the person to have access to the expunged case file for*
37 *the purpose of collecting the 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. 2021 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. 2021 Supp. 21-6614 is hereby amended to read as
3 follows: 21-6614. (a) (1) Except as provided in subsections (b), (c), (d), (e)
4 and (f), any person convicted in this state of a traffic infraction, cigarette
5 or tobacco infraction, misdemeanor or a class D or E felony, or for crimes
6 committed on or after July 1, 1993, any nongrid felony or felony ranked in
7 severity levels 6 through 10 of the nondrug grid, or for crimes committed
8 on or after July 1, 1993, but prior to July 1, 2012, any felony ranked in
9 severity level 4 of the drug grid, or for crimes committed on or after July
10 1, 2012, any felony ranked in severity level 5 of the drug grid may petition
11 the convicting court for the expungement of such conviction or related
12 arrest records if three or more years have elapsed since the person:

13 (A) Satisfied the sentence imposed; or

14 (B) was discharged from probation, a community correctional
15 services program, parole, postrelease supervision, conditional release or a
16 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 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. 2021 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. 2021 Supp. 21-5406, and amendments thereto, or as
9 prohibited by any law of another state that 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 that is in substantial conformity with that statute;

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

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

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

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

27 (7) violating 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 (d) (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, a
33 community correctional services program, parole, postrelease supervision,
34 conditional release or a suspended sentence, if such person was convicted
35 of a first violation of K.S.A. 8-1567, and amendments thereto, including
36 any diversion for such violation.

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

43 (3) Except as provided further, the provisions of this subsection shall

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

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

7 (1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.
8 2021 Supp. 21-5503, and amendments thereto;

9 (2) indecent liberties with a child or aggravated indecent liberties
10 with a child, as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal,
11 or K.S.A. 2021 Supp. 21-5506, and amendments thereto;

12 (3) criminal sodomy, as defined in K.S.A. 21-3505(a)(2) or (a)(3),
13 prior to its repeal, or K.S.A. 2021 Supp. 21-5504(a)(3) or (a)(4), and
14 amendments thereto;

15 (4) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior
16 to its repeal, or K.S.A. 2021 Supp. 21-5504, and amendments thereto;

17 (5) indecent solicitation of a child or aggravated indecent solicitation
18 of a child, as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal,
19 or K.S.A. 2021 Supp. 21-5508, and amendments thereto;

20 (6) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior
21 to its repeal, or K.S.A. 2021 Supp. 21-5510, and amendments thereto;

22 (7) internet trading in child pornography or aggravated internet
23 trading in child pornography, as defined in K.S.A. 2021 Supp. 21-5514,
24 and amendments thereto;

25 (8) aggravated incest, as defined in K.S.A. 21-3603, prior to its
26 repeal, or K.S.A. 2021 Supp. 21-5604, and amendments thereto;

27 (9) endangering a child or aggravated endangering a child, as defined
28 in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2021 Supp.
29 21-5601, and amendments thereto;

30 (10) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal,
31 or K.S.A. 2021 Supp. 21-5602, and amendments thereto;

32 (11) capital murder, as defined in K.S.A. 21-3439, prior to its repeal,
33 or K.S.A. 2021 Supp. 21-5401, and amendments thereto;

34 (12) murder in the first degree, as defined in K.S.A. 21-3401, prior to
35 its repeal, or K.S.A. 2021 Supp. 21-5402, and amendments thereto;

36 (13) murder in the second degree, as defined in K.S.A. 21-3402, prior
37 to its repeal, or K.S.A. 2021 Supp. 21-5403, and amendments thereto;

38 (14) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to
39 its repeal, or K.S.A. 2021 Supp. 21-5404, and amendments thereto;

40 (15) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to
41 its repeal, or K.S.A. 2021 Supp. 21-5405, and amendments thereto;

42 (16) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal,
43 or K.S.A. 2021 Supp. 21-5505, and amendments thereto, when the victim

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

2 (17) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to
3 its repeal, or K.S.A. 2021 Supp. 21-5505, and amendments thereto;

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

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

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

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

18 (A) Defendant's full name;

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

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

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

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

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

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

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

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

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

4 (±) (B) the circumstances and behavior of the petitioner warrant the
5 expungement;

6 (⊖) (C) the expungement is consistent with the public welfare; and

7 (+) (D) with respect to petitions seeking expungement of a felony
8 conviction, possession of a firearm by the petitioner is not likely to pose a
9 threat to the safety of the public.

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

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

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

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

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

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

43 (C) to aid in determining the petitioner's qualifications for

1 employment with the Kansas lottery or for work in sensitive areas within
2 the Kansas lottery as deemed appropriate by the executive director of the
3 Kansas lottery;

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

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

15 (F) upon application for a commercial driver's license under K.S.A.
16 8-2,125 through 8-2,142, and amendments thereto;

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

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

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

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

27 (K) to aid in determining the petitioner's qualifications for a license to
28 act as a bail enforcement agent pursuant to K.S.A. 75-7e01 through 75-
29 7e09, and amendments thereto, and K.S.A. 2021 Supp. 50-6,141, and
30 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 that requires as an element of such offense a prior conviction of
35 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 for fully satisfying*
41 *any 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 *the expunged case file notwithstanding any expungement:*

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

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

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

6 (D) *the beneficiary under an order of restitution as defined in K.S.A.*
7 *20-169, and amendments thereto, and such beneficiary's attorney; and*

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

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

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

23 (2) A person whose arrest record, conviction or diversion of a crime
24 that resulted in such person being prohibited by state or federal law from
25 possessing a firearm has been expunged under this statute shall be deemed
26 to have had such person's right to keep and bear arms fully restored. This
27 restoration of rights shall include, but not be limited to, the right to use,
28 transport, receive, purchase, transfer and possess firearms. The provisions
29 of this paragraph shall apply to all orders of expungement, including any
30 orders issued prior to July 1, 2021.

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

36 (1) The person whose record was expunged;

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

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

43 (4) the secretary for aging and disability services, or a designee of the

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

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

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

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

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

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

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

32 (A) Lottery gaming facility managers and prospective managers,
33 racetrack gaming facility managers and prospective managers, licensees
34 and certificate holders; and

35 (B) their officers, directors, employees, owners, agents and
36 contractors;

37 (11) the Kansas sentencing commission;

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

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

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

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

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

11 (15) a law enforcement agency and the request is accompanied by a
12 statement that the request is being made to aid in determining eligibility
13 for employment as a law enforcement officer as defined by K.S.A. 22-
14 2202, and amendments thereto;

15 (16) (A) the attorney general and the request is accompanied by a
16 statement that the request is being made to aid in determining
17 qualifications for a license to act as a bail enforcement agent pursuant to
18 K.S.A. 75-7e01 through 75-7e09, and amendments thereto, and K.S.A.
19 2021 Supp. 50-6,141, and amendments thereto; or

20 (B) the attorney general for any other purpose authorized by law,
21 except that an expungement record shall not be the basis for denial of a
22 license to carry a concealed handgun under the personal and family
23 protection act; or

24 (17) the Kansas bureau of investigation, for the purpose of
25 completing a person's criminal history record information within the
26 central repository, in accordance with K.S.A. 22-4701 et seq., and
27 amendments thereto.

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

30 (2) Upon the issuance of an order of expungement that resulted in the
31 restoration of a person's right to keep and bear arms, the Kansas bureau of
32 investigation shall report to the federal bureau of investigation that such
33 expunged record be withdrawn from the national instant criminal
34 background check system. The Kansas bureau of investigation shall
35 include such order of expungement in the person's criminal history record
36 for purposes of documenting the restoration of such person's right to keep
37 and bear arms.

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

41 **Sec. 3. K.S.A. 38-2312 is hereby amended to read as follows: 38-**
42 **2312. (a) Except as provided in subsections (b) and (c), any records or**
43 **files specified in this code concerning a juvenile may be expunged**

1 upon application to a judge of the court of the county in which the
2 records or files are maintained. The application for expungement may
3 be made by the juvenile, if 18 years of age or older or, if the juvenile is
4 less than 18 years of age, by the juvenile's parent or next friend.

5 (b) There shall be no expungement of records or files concerning
6 acts committed by a juvenile which, if committed by an adult, would
7 constitute a violation of K.S.A. 21-3401, prior to its repeal, or K.S.A.
8 2021 Supp. 21-5402, and amendments thereto, murder in the first
9 degree; K.S.A. 21-3402, prior to its repeal, or K.S.A. 2021 Supp. 21-
10 5403, and amendments thereto, murder in the second degree; K.S.A.
11 21-3403, prior to its repeal, or K.S.A. 2021 Supp. 21-5404, and
12 amendments thereto, voluntary manslaughter; K.S.A. 21-3404, prior
13 to its repeal, or K.S.A. 2021 Supp. 21-5405, and amendments thereto,
14 involuntary manslaughter; K.S.A. 21-3439, prior to its repeal, or
15 K.S.A. 2021 Supp. 21-5401, and amendments thereto, capital murder;
16 K.S.A. 21-3442, prior to its repeal, or K.S.A. 2021 Supp. 21-5405(a)(3)
17 or (a)(5), and amendments thereto, involuntary manslaughter while
18 driving under the influence of alcohol or drugs; K.S.A. 21-3502, prior
19 to its repeal, or K.S.A. 2021 Supp. 21-5503, and amendments thereto,
20 rape; K.S.A. 21-3503, prior to its repeal, or K.S.A. 2021 Supp. 21-
21 5506(a), and amendments thereto, indecent liberties with a child;
22 K.S.A. 21-3504, prior to its repeal, or K.S.A. 2021 Supp. 21-5506(b),
23 and amendments thereto, aggravated indecent liberties with a child;
24 K.S.A. 21-3506, prior to its repeal, or K.S.A. 2021 Supp. 21-5504(b),
25 and amendments thereto, aggravated criminal sodomy; K.S.A. 21-
26 3510, prior to its repeal, or K.S.A. 2021 Supp. 21-5508(a), and
27 amendments thereto, indecent solicitation of a child; K.S.A. 21-3511,
28 prior to its repeal, or K.S.A. 2021 Supp. 21-5508(b), and amendments
29 thereto, aggravated indecent solicitation of a child; K.S.A. 21-3516,
30 prior to its repeal, or K.S.A. 2021 Supp. 21-5510, and amendments
31 thereto, sexual exploitation of a child; K.S.A. 2021 Supp. 21-5514(a),
32 and amendments thereto, internet trading in child pornography;
33 K.S.A. 2021 Supp. 21-5514(b), and amendments thereto, aggravated
34 internet trading in child pornography; K.S.A. 21-3603, prior to its
35 repeal, or K.S.A. 2021 Supp. 21-5604(b), and amendments thereto,
36 aggravated incest; K.S.A. 21-3608, prior to its repeal, or K.S.A. 2021
37 Supp. 21-5601(a), and amendments thereto, endangering a child;
38 K.S.A. 21-3609, prior to its repeal, or K.S.A. 2021 Supp. 21-5602, and
39 amendments thereto, abuse of a child; or which would constitute an
40 attempt to commit a violation of any of the offenses specified in this
41 subsection.

42 (c) Notwithstanding any other law to the contrary, for any
43 offender who is required to register as provided in the Kansas

1 offender registration act, K.S.A. 22-4901 et seq., and amendments
 2 thereto, there shall be no expungement of any conviction or any part
 3 of the offender's criminal record while the offender is required to
 4 register as provided in the Kansas offender registration act.

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

- 8 ~~(1)The~~(A) Juvenile's full name;
 9 ~~(2)the~~(B) full name of the juvenile as reflected in the court
 10 record, if different than~~(1)~~ subparagraph (A);
 11 ~~(3)the~~(C) juvenile's sex and date of birth;
 12 ~~(4)the~~(D) offense for which the juvenile was adjudicated;
 13 ~~(5)the~~(E) date of the trial; and
 14 ~~(6)the~~(F) identity of the trial court.

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

21 (3) Any person who may have relevant information about the
 22 petitioner may testify at the hearing. The court may inquire into the
 23 background of the petitioner.

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

26 (A) (i) The juvenile has reached 23 years of age or that two years
 27 have elapsed since the final discharge;

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

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

41 (B) ~~since the final discharge of the juvenile, in the past two years the~~
 42 ~~juvenile has not been convicted of a felony or of a misdemeanor or~~
 43 ~~than a traffic offense or adjudicated as a juvenile offender under the~~

1 revised Kansas juvenile justice code *for a felony and no proceedings*
2 *are pending seeking such a conviction or adjudication; and*

3 (C) the circumstances and behavior of the petitioner warrant
4 expungement.

5 (2) ~~The court may require that all court costs, fees and restitution~~
6 ~~shall be paid shall not deny the petition for expungement due to the~~
7 *juvenile's inability to pay outstanding costs, fees, fines or restitution. The*
8 *petitioner's unwillingness, rather than inability, to pay such costs, fees,*
9 *fines or restitution may be considered as a factor in denying the petition*
10 *for expungement. Unless the court orders otherwise, expungement shall*
11 *not release the juvenile from the obligation to pay outstanding costs, fees,*
12 *fines or restitution.*

13 (f) Upon entry of an order expunging records or files, the offense
14 which the records or files concern shall be treated as if it never
15 occurred, except that upon conviction of a crime or adjudication in a
16 subsequent action under this code the offense may be considered in
17 determining the sentence to be imposed. The petitioner, the court and
18 all law enforcement officers and other public offices and agencies shall
19 properly reply on inquiry that no record or file exists with respect to
20 the juvenile. Inspection of the expunged files or records thereafter
21 may be permitted by order of the court upon petition by the person
22 who is the subject thereof. The inspection shall be limited to inspection
23 by the person who is the subject of the files or records and the
24 person's designees.

25 (g) A certified copy of any order made pursuant to subsection (a)
26 or (d) shall be sent to the Kansas bureau of investigation, which shall
27 then notify every juvenile or criminal justice agency which may
28 possess records or files ordered to be expunged. If the agency fails to
29 comply with the order within a reasonable time after its receipt, such
30 agency may be adjudged in contempt of court and punished
31 accordingly.

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

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

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

41 (k) Whenever the records or files of any adjudication have been
42 expunged under the provisions of this section, the custodian of the
43 records or files of adjudication relating to that offense shall not

1 disclose the existence of such records or files, except when requested
2 by:

3 (1) The person whose record was expunged;

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

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

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

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

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

22 (7) the governor or the Kansas racing commission, or a designee
23 of the commission, and the request is accompanied by a statement that
24 the request is being made to aid in determining qualifications for
25 executive director of the commission, for employment with the
26 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
29 commission;

30 (8) the Kansas sentencing commission; or

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

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

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

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

41 ~~Sec.-3.~~ 4. K.S.A. 38-2312 and K.S.A. 2021 Supp. 12-4516 and 21-
42 6614 are hereby repealed.

43 ~~Sec.-4.~~ 5. This act shall take effect and be in force from and after its

- 1 publication in the statute book.