

As Amended by House Committee

Session of 2011

HOUSE BILL No. 2329

By Committee on Corrections and Juvenile Justice

2-11

1 AN ACT concerning courts; relating to expunged records; relating to
2 petitions for relief; amending K.S.A. 22-4701 and 22-4705 and
3 K.S.A. 2010 Supp. 12-4516a, 22-2410 and 38-2312 and section 254
4 of chapter 136 or the 2010 Session Laws of Kansas repealing the
5 existing sections.
6

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

8 New Section 1. (a) An individual who has been adjudicated as a
9 mentally ill person subject to involuntary commitment for care and
10 treatment, may petition for relief of disabilities for the purpose of
11 firearm prohibitions imposed under state and federal laws.

12 (b) A petitioner shall submit such petition to a court of competent
13 jurisdiction within this state.

14 (c) The court may only consider petitions for relief due to mental
15 health adjudications or commitments that occurred within the state.

16 (d) The court shall consider the petition for relief, in accordance
17 with the principles of due process. Such petitioner shall submit, and
18 such court shall receive and consider:

19 (1) The circumstances regarding the firearm disability imposed by
20 federal law;

21 (2) such petitioner's mental health records;

22 (3) such petitioner's criminal history records; and

23 (4) such petitioner's reputation, developed through character
24 witness statements, testimony or other character evidence.

25 (e) The court shall grant relief only if such court determines that:

26 (1) The petitioner will not be likely to act in a manner dangerous
27 to public safety; and

28 (2) granting such relief would not be contrary to the public
29 interest.

30 (f) (1) If the court denies the petition for relief, the petitioner may
31 petition a court of proper jurisdiction for a de novo judicial review of
32 the court's decision to deny such petition.

33 (2) The reviewing court may give deference to the decision of the

1 court denying such relief.

2 (g) Documentation of a granted petition shall be submitted to the
3 Kansas bureau of investigation. The Kansas bureau of investigation
4 shall immediately cause such order to be entered into the appropriate
5 state and federal databases.

6 (h) As used in this section:

7 (1) "Mentally ill person subject to involuntary commitment for
8 care and treatment" has the same meaning as defined in K.S.A. 59-
9 2946, and amendments thereto.

10 (2) "Due process" requires that:

11 (A) The petitioner shall have the opportunity to submit such
12 petitioner's own evidence to the court;

13 (B) an independent decision maker, other than the individual who
14 gathered the evidence for the court acting on the application, shall
15 review such evidence; and

16 (C) a record of the proceedings shall be created and maintained for
17 review.

18 Sec. 2. K.S.A. 2010 Supp. 12-4516a is hereby amended to read as
19 follows: 12-4516a. (a) Any person who has been arrested on a violation
20 of a city ordinance of this state may petition the court for the
21 expungement of such arrest record.

22 (b) When a petition for expungement is filed, the court shall set a
23 date for hearing on such petition and shall cause notice of such hearing
24 to be given to the prosecuting attorney and the arresting law
25 enforcement agency. When a petition for expungement is filed, the
26 official court file shall be separated from the other records of the court,
27 and shall be disclosed only to a judge of the court and members of the
28 staff of the court designated by a judge of the district court, the
29 prosecuting attorney, the arresting law enforcement agency, or any
30 other person when authorized by a court order, subject to any
31 conditions imposed by the order. The petition shall state: (1) The
32 petitioner's full name;

33 (2) the full name of the petitioner at the time of arrest, if different
34 than the petitioner's current name;

35 (3) the petitioner's sex, race and date of birth;

36 (4) the crime for which the petitioner was arrested;

37 (5) the date of the petitioner's arrest; and

38 (6) the identity of the arresting law enforcement agency.

39 A municipal court may prescribe a fee to be charged as costs for a

1 person petitioning for an order of expungement pursuant to this section,
2 except that no fee shall be charged to a person who was arrested as a
3 result of being a victim of identity theft under K.S.A. 21-4018, and
4 amendments thereto. Any person who may have relevant information
5 about the petitioner may testify at the hearing. The court may inquire
6 into the background of the petitioner.

7 (c) At the hearing on a petition for expungement, the court shall
8 order the arrest record and subsequent court proceedings, if any,
9 expunged upon finding:

10 (1) The arrest occurred because of mistaken identity;

11 (2) a court has found that there was no probable cause for the
12 arrest;

13 (3) the petitioner was found not guilty in court proceedings; or

14 (4) the expungement would be in the best interests of justice and
15 (A) charges have been dismissed; or (B) no charges have been or are
16 likely to be filed.

17 (d) When the court has ordered expungement of an arrest record
18 and subsequent court proceedings, if any, the order shall state the
19 information required to be stated in the petition and shall state the
20 grounds for expungement under subsection (c). The clerk of the court
21 shall send a certified copy of the order to the Kansas bureau of
22 investigation which shall notify the federal bureau of investigation, the
23 secretary of corrections and any other criminal justice agency which
24 may have a record of the arrest. If an order of expungement is entered,
25 the petitioner shall be treated as not having been arrested.

26 (e) If the ground for expungement is as provided in subsection (c)
27 (4), the court shall determine whether, in the interest of public welfare,
28 the records should be available for any of the following purposes:

29 (1) In any application for employment as a detective with a private
30 detective agency, as defined by K.S.A. 75-7b01, and amendments
31 thereto; as security personnel with a private patrol operator, as defined
32 by K.S.A. 75-7b01, and amendments thereto; or with an institution, as
33 defined in K.S.A. 76-12a01, and amendments thereto, of the
34 department of social and rehabilitation services;

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

37 (3) to aid in determining the petitioner's qualifications for
38 employment with the Kansas lottery or for work in sensitive areas
39 within the Kansas lottery as deemed appropriate by the executive

- 1 director of the Kansas lottery;
- 2 (4) to aid in determining the petitioner's qualifications for
3 executive director of the Kansas racing commission, for employment
4 with the commission or for work in sensitive areas in parimutuel racing
5 as deemed appropriate by the executive director of the commission, or
6 to aid in determining qualifications for licensure or renewal of licensure
7 by the commission;
- 8 (5) in any application for a commercial driver's license under
9 K.S.A. 8-2,125 through 8-2,142, and amendments thereto;
- 10 (6) to aid in determining the petitioner's qualifications to be an
11 employee of the state gaming agency;
- 12 (7) to aid in determining the petitioner's qualifications to be an
13 employee of a tribal gaming commission or to hold a license issued
14 pursuant to a tribal-state gaming compact; or
- 15 (8) in any other circumstances which the court deems appropriate.
- 16 (f) *The court shall make all expunged records and related*
17 *information in such court's possession, created prior to, on and after*
18 *July 1, 2011, available to the Kansas bureau of investigation for the*
19 *purposes of:*
- 20 (1) *Completing a person's criminal history record information*
21 *within the central repository in accordance with K.S.A. 22-4701 et seq.,*
22 *and amendments thereto; or*
- 23 (2) *providing information or documentation to the federal bureau*
24 *of investigation, in connection with the national instant criminal*
25 *background check system, to determine a person's qualification to*
26 *possess a firearm.*
- 27 (g) Subject to any disclosures required under subsection (e), in any
28 application for employment, license or other civil right or privilege, or
29 any appearance as a witness, a person whose arrest records have been
30 expunged as provided in this section may state that such person has
31 never been arrested.
- 32 ~~(g)~~(h) Whenever a petitioner's arrest records have been expunged
33 as provided in this section, the custodian of the records of arrest,
34 incarceration due to arrest or court proceedings related to the arrest,
35 shall not disclose the arrest or any information related to the arrest,
36 except as directed by the order of expungement or when requested by
37 the person whose arrest record was expunged.
- 38 Sec. 3. K.S.A. 2010 Supp. 22-2410 is hereby amended to read as
39 follows: 22-2410. (a) Any person who has been arrested in this state

1 may petition the district court for the expungement of such arrest
2 record.

3 (b) When a petition for expungement is filed, the court shall set a
4 date for hearing on such petition and shall cause notice of such hearing
5 to be given to the prosecuting attorney and the arresting law
6 enforcement agency. When a petition for expungement is filed, the
7 official court file shall be separated from the other records of the court,
8 and shall be disclosed only to a judge of the court and members of the
9 staff of the court designated by a judge of the district court, the
10 prosecuting attorney, the arresting law enforcement agency, or any
11 other person when authorized by a court order, subject to any
12 conditions imposed by the order. Except as otherwise provided by law,
13 a petition for expungement shall be accompanied by a docket fee in the
14 amount of \$100. Except as provided further, the docket fee established
15 in this section shall be the only fee collected or moneys in the nature of
16 a fee collected for the docket fee. Such fee shall only be established by
17 an act of the legislature and no other authority is established by law or
18 otherwise to collect a fee. On and after the effective date of this act
19 through June 30, 2011, the supreme court may impose an additional
20 charge, not to exceed \$15 per docket fee, to fund the costs of
21 nonjudicial personnel. The petition shall state:

- 22 (1) The petitioner's full name;
- 23 (2) the full name of the petitioner at the time of arrest, if different
24 than the petitioner's current name;
- 25 (3) the petitioner's sex, race and date of birth;
- 26 (4) the crime for which the petitioner was arrested;
- 27 (5) the date of the petitioner's arrest; and
- 28 (6) the identity of the arresting law enforcement agency.

29 No surcharge or fee shall be imposed to any person filing a petition
30 pursuant to this section, who was arrested as a result of being a victim
31 of identity theft under K.S.A. 21-4018, and amendments thereto. Any
32 person who may have relevant information about the petitioner may
33 testify at the hearing. The court may inquire into the background of the
34 petitioner.

35 (c) At the hearing on a petition for expungement, the court shall
36 order the arrest record and subsequent court proceedings, if any,
37 expunged upon finding:

- 38 (1) The arrest occurred because of mistaken identity;
- 39 (2) a court has found that there was no probable cause for the

1 arrest;

2 (3) the petitioner was found not guilty in court proceedings; or

3 (4) the expungement would be in the best interests of justice and
4 (A) charges have been dismissed; or (B) no charges have been or are
5 likely to be filed.

6 (d) When the court has ordered expungement of an arrest record
7 and subsequent court proceedings, if any, the order shall state the
8 information required to be stated in the petition and shall state the
9 grounds for expungement under subsection (c). The clerk of the court
10 shall send a certified copy of the order to the Kansas bureau of
11 investigation which shall notify the federal bureau of investigation, the
12 secretary of corrections and any other criminal justice agency which
13 may have a record of the arrest. If an order of expungement is entered,
14 the petitioner shall be treated as not having been arrested.

15 (e) If the ground for expungement is as provided in subsection (c)
16 (4), the court shall determine whether, in the interests of public welfare,
17 the records should be available for any of the following purposes:

18 (1) In any application for employment as a detective with a private
19 detective agency, as defined in K.S.A. 75-7b01, and amendments
20 thereto; as security personnel with a private patrol operator, as defined
21 by K.S.A. 75-7b01, and amendments thereto; or with an institution, as
22 defined in K.S.A. 76-12a01, and amendments thereto, of the
23 department of social and rehabilitation services;

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

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

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

36 (5) in any application for a commercial driver's license under
37 K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

38 (6) to aid in determining the petitioner's qualifications to be an
39 employee of the state gaming agency;

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

4 (8) in any other circumstances which the court deems appropriate.

5 (f) *The court shall make all expunged records and related*
6 *information in such court's possession, created prior to, on and after*
7 *July 1, 2011, available to the Kansas bureau of investigation for the*
8 *purposes of:*

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

12 (2) *providing information or documentation to the federal bureau*
13 *of investigation, in connection with the national instant criminal*
14 *background check system, to determine a person's qualification to*
15 *possess a firearm.*

16 (g) Subject to any disclosures required under subsection (e), in any
17 application for employment, license or other civil right or privilege, or
18 any appearance as a witness, a person whose arrest records have been
19 expunged as provided in this section may state that such person has
20 never been arrested.

21 ~~(g)~~(h) Whenever a petitioner's arrest records have been expunged
22 as provided in this section, the custodian of the records of arrest,
23 incarceration due to arrest or court proceedings related to the arrest,
24 shall not disclose the arrest or any information related to the arrest,
25 except as directed by the order of expungement or when requested by
26 the person whose arrest record was expunged.

27 ~~(h)~~(i) The docket fee collected at the time the petition for
28 expungement is filed shall be disbursed in accordance with K.S.A. 20-
29 362, and amendments thereto.

30 Sec. 4. K.S.A. 22-4701 is hereby amended to read as follows: 22-
31 4701. As used in this act, unless the context clearly requires otherwise:

32 (a) "Central repository" means the criminal justice information
33 system central repository created by this act and the juvenile offender
34 information system created pursuant to K.S.A. ~~2007~~2010 Supp. 38-
35 2326, and amendments thereto.

36 (b) "Criminal history record information" means *all* data initiated
37 or collected by a criminal justice agency on a person pertaining to a
38 reportable event, *and any supporting documentation.* ~~The term~~ *Criminal*
39 *history record information* does not include:

- 1 (1) Data contained in intelligence or investigatory files or police
2 work-product records used solely for police investigation purposes;
- 3 (2) wanted posters, police blotter entries, court records of public
4 judicial proceedings or published court opinions;
- 5 (3) data pertaining to violations of the traffic laws of the state or
6 any other traffic law or ordinance, other than vehicular homicide; or
- 7 (4) presentence investigation and other reports prepared for use by
8 a court in the exercise of criminal jurisdiction or by the governor in the
9 exercise of the power of pardon, reprieve or commutation.
- 10 (c) "Criminal justice agency" means any government agency or
11 subdivision of any such agency which is authorized by law to exercise
12 the power of arrest, detention, prosecution, adjudication, correctional
13 supervision, rehabilitation or release of persons suspected, charged or
14 convicted of a crime and which allocates a substantial portion of its
15 annual budget to any of these functions. The term includes, but is not
16 limited to, the following agencies, when exercising jurisdiction over
17 criminal matters or criminal history record information:
- 18 (1) State, county, municipal and railroad police departments,
19 sheriffs' offices and countywide law enforcement agencies, correctional
20 facilities, jails and detention centers;
- 21 (2) the offices of the attorney general, county or district attorneys
22 and any other office in which are located persons authorized by law to
23 prosecute persons accused of criminal offenses;
- 24 (3) the district courts, the court of appeals, the supreme court, the
25 municipal courts and the offices of the clerks of these courts;
- 26 (4) the Kansas sentencing commission;
- 27 (5) the Kansas parole board; and
- 28 (6) the juvenile justice authority.
- 29 (d) "Criminal justice information system" means the equipment
30 (including computer hardware and software), facilities, procedures,
31 agreements and personnel used in the collection, processing,
32 preservation and dissemination of criminal history record information.
- 33 (e) "Director" means the director of the Kansas bureau of
34 investigation.
- 35 (f) "Disseminate" means to transmit criminal history record
36 information in any oral or written form. The term does not include:
- 37 (1) The transmittal of such information within a criminal justice
38 agency;
- 39 (2) the reporting of such information as required by this act; or

1 (3) the transmittal of such information between criminal justice
2 agencies in order to permit the initiation of subsequent criminal justice
3 proceedings against a person relating to the same offense.

4 (g) "Reportable event" means an event specified or provided for in
5 K.S.A. 22-4705, and amendments thereto.

6 Sec. 5. K.S.A. 22-4705 is hereby amended to read as follows: 22-
7 4705. (a) The following events are reportable events under this act:

- 8 (1) Issuance of an arrest warrant;
- 9 (2) an arrest;
- 10 (3) release of a person after arrest without the filing of a charge;
- 11 (4) dismissal or quashing of an indictment or criminal information;
- 12 (5) an acquittal, conviction or other disposition at or following
13 trial, including a finding of probation before judgment;
- 14 (6) imposition of a sentence;
- 15 (7) commitment to a correctional facility, whether state or locally
16 operated;
- 17 (8) release from detention or confinement;
- 18 (9) an escape from confinement;
- 19 (10) a pardon, reprieve, commutation of sentence or other change
20 in a sentence, including a change ordered by a court;
- 21 (11) judgment of an appellate court that modifies or reverses the
22 lower court decision;
- 23 (12) order of a court in a collateral proceeding that affects a
24 person's conviction, sentence or confinement, including any
25 expungement or annulment of arrests or convictions pursuant to state
26 statute; and
- 27 (13) any other event arising out of or occurring during the course
28 of criminal justice proceedings declared to be reportable by rule or
29 regulation of the director.

30 (b) There is hereby established a criminal justice information
31 system central repository for the collection, storage, and dissemination
32 of criminal history record information. The central repository shall be
33 operated by the Kansas bureau of investigation under the administrative
34 control of the director.

35 (c) Except as otherwise provided by this subsection, every
36 criminal justice agency shall report criminal history record information,
37 whether collected manually or by means of an automated system, to the
38 central repository, in accordance with rules and regulations adopted
39 pursuant to this act. A criminal justice agency shall report to the central

1 repository those reportable events involving a violation of a county
2 resolution or city ordinance only when required by rules and
3 regulations adopted by the director.

4 (d) Reporting methods may include:

5 (1) Submittal of criminal history record information by a criminal
6 justice agency directly to the central repository;

7 (2) if the information can readily be collected and reported
8 through the court system, submittal to the central repository by the
9 administrative office of the courts; or

10 (3) if the information can readily be collected and reported
11 through criminal justice agencies that are part of a geographically based
12 information system, submittal to the central repository by the agencies.

13 (e) Nothing in this section shall prevent a criminal justice agency
14 from maintaining more detailed information than is required to be
15 reported to the central repository. However, the dissemination of that
16 criminal history record information is governed by the provisions of
17 this act.

18 (f) The director may determine, by rule and regulation, the
19 reportable events to be reported by each criminal justice agency, in
20 order to avoid duplication in reporting.

21 (g) *No court or criminal justice agency may assess fees or charges*
22 *against the central repository for providing criminal history record*
23 *information created prior to, on or after July 1, 2011.*

24 Sec. 6. K.S.A. 2010 Supp. 38-2312 is hereby amended to read as
25 follows: 38-2312. (a) Except as provided in subsection (b), any records
26 or files specified in this code concerning a juvenile may be expunged
27 upon application to a judge of the court of the county in which the
28 records or files are maintained. The application for expungement may
29 be made by the juvenile, if 18 years of age or older or, if the juvenile is
30 less than 18 years of age, by the juvenile's parent or next friend.

31 (b) There shall be no expungement of records or files concerning
32 acts committed by a juvenile which, if committed by an adult, would
33 constitute a violation of K.S.A. 21-3401, *prior to its repeal, or section*
34 *37 of chapter 136 of the 2010 Session Laws of Kansas*, and
35 amendments thereto, murder in the first degree, K.S.A. 21-3402, *prior*
36 *to its repeal, or section 38 of chapter 136 of the 2010 Session Laws of*
37 *Kansas*, and amendments thereto, murder in the second degree, K.S.A.
38 21-3403, *prior to its repeal, or section 39 of chapter 136 of the 2010*
39 *Session Laws of Kansas*, and amendments thereto, voluntary

1 manslaughter, K.S.A. 21-3404, *prior to its repeal, or section 40 of*
2 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
3 thereto, involuntary manslaughter, K.S.A. 21-3439, *prior to its repeal,*
4 *or section 36 of chapter 136 of the 2010 Session Laws of Kansas*, and
5 amendments thereto, capital murder, K.S.A. 21-3442, *prior to its*
6 *repeal*, ~~and amendments thereto~~, involuntary manslaughter while
7 driving under the influence of alcohol or drugs, K.S.A. 21-3502, *prior*
8 *to its repeal, or section 67 of chapter 136 of the 2010 Session Laws of*
9 *Kansas*, and amendments thereto, rape, K.S.A. 21-3503, *prior to its*
10 *repeal, or subsection (a) of section 70 of chapter 136 of the 2010*
11 *Session Laws of Kansas*, and amendments thereto, indecent liberties
12 with a child, K.S.A. 21-3504, *prior to its repeal, or subsection (b) of*
13 *section 70 of chapter 136 of the 2010 Session Laws of Kansas*, and
14 amendments thereto, aggravated indecent liberties with a child, K.S.A.
15 21-3506, *prior to its repeal, or subsection (b) of section 68 of chapter*
16 *136 of the 2010 Session Laws of Kansas*, and amendments thereto,
17 aggravated criminal sodomy, K.S.A. 21-3510, *prior to its repeal, or*
18 *subsection (a) of section 72 of chapter 136 of the 2010 Session Laws of*
19 *Kansas*, and amendments thereto, indecent solicitation of a child,
20 K.S.A. 21-3511, *prior to its repeal, or subsection (a) of section 72 of*
21 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
22 thereto, aggravated indecent solicitation of a child, K.S.A. 21-3516,
23 *prior to its repeal, or section 74 of chapter 136 of the 2010 Session*
24 *Laws of Kansas*, and amendments thereto, sexual exploitation, K.S.A.
25 21-3603, *prior to its repeal, or subsection (b) of section 81 of chapter*
26 *136 of the 2010 Session Laws of Kansas*, and amendments thereto,
27 aggravated incest, K.S.A. 21-3608, *prior to its repeal, or subsection (a)*
28 *of section 78 of chapter 136 of the 2010 Session Laws of Kansas*, and
29 amendments thereto, endangering a child, K.S.A. 21-3609, *prior to its*
30 *repeal, or section 79 of chapter 136 of the 2010 Session Laws of*
31 *Kansas*, and amendments thereto, abuse of a child, or which would
32 constitute an attempt to commit a violation of any of the offenses
33 specified in this subsection.

34 (c) When a petition for expungement is filed, the court shall set a
35 date for a hearing on the petition and shall give notice thereof to the
36 county or district attorney. The petition shall state: (1) The juvenile's
37 full name; (2) the full name of the juvenile as reflected in the court
38 record, if different than (1); (3) the juvenile's sex and date of birth; (4)
39 the offense for which the juvenile was adjudicated; (5) the date of the

1 trial; and (6) the identity of the trial court. Except as otherwise provided
2 by law, a petition for expungement shall be accompanied by a docket
3 fee in the amount of \$100. On and after the effective date of this act
4 through June 30, 2011, the supreme court may impose a charge, not to
5 exceed \$15 per case, to fund the costs of non-judicial personnel. All
6 petitions for expungement shall be docketed in the original action. Any
7 person who may have relevant information about the petitioner may
8 testify at the hearing. The court may inquire into the background of the
9 petitioner.

10 (d) (1) After hearing, the court shall order the expungement of the
11 records and files if the court finds that:

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

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

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

21 (2) The court may require that all court costs, fees and restitution
22 shall be paid.

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

35 (f) *A certified Copy* of any order made pursuant to
36 subsection (a) or (c) shall be sent to ~~each public officer and agency in~~
37 ~~the county having possession of any~~ *the Kansas bureau of investigation,*
38 *which shall notify every juvenile or criminal justice agency which may*
39 *possess records or files ordered to be expunged. If the officer or agency*

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

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

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

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

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

17 (1) The person whose record was expunged;

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

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

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

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

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

36 (7) the governor or the Kansas racing commission, or a designee
37 of the commission, and the request is accompanied by a statement that
38 the request is being made to aid in determining qualifications for
39 executive director of the commission, for employment with the

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

5 (8) the Kansas sentencing commission; *or*

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

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

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

14 (k) *The provisions of subsection (j)(9) shall apply to all records*
15 *created prior to, on and after July 1, 2011.*

16 Sec. 7. Section 254 of chapter 136 of the 2010 Session Laws of
17 Kansas is hereby amended to read as follows: Sec. 254. (a) (1) Except
18 as provided in subsections (b) and (c), any person convicted in this
19 state of a traffic infraction, cigarette or tobacco infraction,
20 misdemeanor or a class D or E felony, or for crimes committed on or
21 after July 1, 1993, nondrug crimes ranked in severity levels 6 through
22 10 or any felony ranked in severity level 4 of the drug grid, may
23 petition the convicting court for the expungement of such conviction or
24 related arrest records if three or more years have elapsed since the
25 person: (A) Satisfied the sentence imposed; or (B) was discharged from
26 probation, a community correctional services program, parole,
27 postrelease supervision, conditional release or a suspended sentence.

28 (2) Except as provided in subsections (b) and (c), any person who
29 has fulfilled the terms of a diversion agreement may petition the district
30 court for the expungement of such diversion agreement and related
31 arrest records if three or more years have elapsed since the terms of the
32 diversion agreement were fulfilled.

33 (b) Except as provided in subsection (c), no person may petition
34 for expungement until five or more years have elapsed since the person
35 satisfied the sentence imposed, the terms of a diversion agreement or
36 was discharged from probation, a community correctional services
37 program, parole, postrelease supervision, conditional release or a
38 suspended sentence, if such person was convicted of a class A, B or C
39 felony, or for crimes committed on or after July 1, 1993, if convicted of

1 an off-grid felony or any nondrug crime ranked in severity levels 1
2 through 5 or any felony ranked in severity levels 1 through 3 of the
3 drug grid, or:

4 (1) Vehicular homicide, as defined by *K.S.A. 21-3405, prior to*
5 *its repeal, or section 41 of chapter 136 of the 2010 Session Laws of*
6 *Kansas*, and amendments thereto, or as prohibited by any law of
7 another state which is in substantial conformity with that statute;

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

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

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

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

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

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

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

29 (c) There shall be no expungement of convictions for the
30 following offenses or of convictions for an attempt to commit any of
31 the following offenses:

32 (1) Rape as defined in *K.S.A. 21-3502, prior to its repeal, or*
33 *section 67 of chapter 136 of the 2010 Session Laws of Kansas*, and
34 amendments thereto;

35 (2) indecent liberties with a child or aggravated indecent liberties
36 with a child as defined in *K.S.A. 21-3503 or 21-3504, prior to their*
37 *repeal, or section 70 of chapter 136 of the 2010 Session Laws of*
38 *Kansas*, and amendments thereto;

39 (3) criminal sodomy as defined in *subsection (a)(2) or (a)(3) of*

- 1 *K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) or (a)(4) of*
2 *section 68 of chapter 136 of the 2010 Session Laws of Kansas, and*
3 *amendments thereto;*
- 4 (4) aggravated criminal sodomy as defined in *K.S.A. 21-3506,*
5 *prior to its repeal, or section 68 of chapter 136 of the 2010 Session*
6 *Laws of Kansas, and amendments thereto;*
- 7 (5) indecent solicitation of a child or aggravated indecent
8 solicitation of a child as defined in *K.S.A. 21-3510 or 21-3511, prior to*
9 *their repeal, or section 72 of chapter 136 of the 2010 Session Laws of*
10 *Kansas, and amendments thereto;*
- 11 (6) sexual exploitation of a child as defined in *K.S.A. 21-3516,*
12 *prior to its repeal, or section 74 of chapter 136 of the 2010 Session*
13 *Laws of Kansas, and amendments thereto;*
- 14 (7) aggravated incest as defined in *K.S.A. 21-3603, prior to its*
15 *repeal, or section 81 of chapter 136 of the 2010 Session Laws of*
16 *Kansas, and amendments thereto;*
- 17 (8) endangering a child or aggravated endangering a child as
18 defined in *K.S.A. 21-3608 or 21-3608a, prior to their repeal, or section*
19 *78 of chapter 136 of the 2010 Session Laws of Kansas, and*
20 *amendments thereto;*
- 21 (9) abuse of a child as defined in *K.S.A. 21-3609, prior to its*
22 *repeal, or section 79 of chapter 136 of the 2010 Session Laws of*
23 *Kansas, and amendments thereto;*
- 24 (10) capital murder as defined in *K.S.A. 21-3439, prior to its*
25 *repeal, or section 36 of chapter 136 of the 2010 Session Laws of*
26 *Kansas, and amendments thereto;*
- 27 (11) murder in the first degree as defined in *K.S.A. 21-3401, prior*
28 *to its repeal, or section 37 of chapter 136 of the 2010 Session Laws of*
29 *Kansas, and amendments thereto;*
- 30 (12) murder in the second degree as defined in *K.S.A. 21-3402,*
31 *prior to its repeal, or section 38 of chapter 136 of the 2010 Session*
32 *Laws of Kansas, and amendments thereto;*
- 33 (13) voluntary manslaughter as defined in *K.S.A. 21-3403, prior to*
34 *its repeal, or section 39 of chapter 136 of the 2010 Session Laws of*
35 *Kansas, and amendments thereto;*
- 36 (14) involuntary manslaughter as defined in *K.S.A. 21-3404, prior*
37 *to its repeal, or section 40 of chapter 136 of the 2010 Session Laws of*
38 *Kansas, and amendments thereto;*
- 39 (15) sexual battery as defined in *K.S.A. 21-3517, prior to its*

1 *repeal, or section 69 of chapter 136 of the 2010 Session Laws of*
2 *Kansas, and amendments thereto, when the victim was less than 18*
3 *years of age at the time the crime was committed;*
4 (16) aggravated sexual battery as defined in *K.S.A. 21-3518, prior*
5 *to its repeal, or section 69 of chapter 136 of the 2010 Session Laws of*
6 *Kansas, and amendments thereto;*
7 (17) a violation of K.S.A. 8-1567, and amendments thereto,
8 including any diversion for such violation;
9 (18) a violation of K.S.A. 8-2,144, and amendments thereto,
10 including any diversion for such violation; or
11 (19) any conviction for any offense in effect at any time prior to
12 ~~the effective date of this act~~ *July 1, 2011*, that is comparable to any
13 offense as provided in this subsection.
14 (d) (1) When a petition for expungement is filed, the court shall
15 set a date for a hearing of such petition and shall cause notice of such
16 hearing to be given to the prosecutor and the arresting law enforcement
17 agency. The 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 ~~further, there shall be no docket~~
28 ~~fee for filing a petition pursuant to this section~~ *by law, a petition for*
29 *expungement shall be accompanied by a docket fee in the amount of*
30 *\$100. On and after July 1, 2009 through June 30, 2010* *April 15, 2010*
31 *through June 30, 2011*, the supreme court may impose a charge, not to
32 exceed ~~\$10~~ *\$15* per case, to fund the costs of non-judicial personnel.
33 The charge established in this section shall be the only fee collected or
34 moneys in the nature of a fee collected for the case. Such charge shall
35 only be established by an act of the legislature and no other authority is
36 established by law or otherwise to collect a fee.
37 (3) All petitions for expungement shall be docketed in the original
38 criminal action. Any person who may have relevant information about
39 the petitioner may testify at the hearing. The court may inquire into the

1 background of the petitioner and shall have access to any reports or
2 records relating to the petitioner that are on file with the secretary of
3 corrections or the Kansas parole board.

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

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

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

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

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

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

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

29 (A) In any application for licensure as a private detective, private
30 detective agency, certification as a firearms trainer pursuant to K.S.A.
31 20092010 Supp. 75-7b21, and amendments thereto, or employment as a
32 detective with a private detective agency, as defined by K.S.A. 75-
33 7b01, and amendments thereto; as security personnel with a private
34 patrol operator, as defined by K.S.A. 75-7b01, and amendments
35 thereto; or with an institution, as defined in K.S.A. 76-12a01, and
36 amendments thereto, of the department of social and rehabilitation
37 services;

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

- 1 (C) to aid in determining the petitioner's qualifications for
2 employment with the Kansas lottery or for work in sensitive areas
3 within the Kansas lottery as deemed appropriate by the executive
4 director of the Kansas lottery;
- 5 (D) to aid in determining the petitioner's qualifications for
6 executive director of the Kansas racing and gaming commission, for
7 employment with the commission or for work in sensitive areas in
8 parimutuel racing as deemed appropriate by the executive director of
9 the commission, or to aid in determining qualifications for licensure or
10 renewal of licensure by the commission;
- 11 (E) to aid in determining the petitioner's qualifications for the
12 following under the Kansas expanded lottery act: (i) Lottery gaming
13 facility manager or prospective manager, racetrack gaming facility
14 manager or prospective manager, licensee or certificate holder; or (ii)
15 an officer, director, employee, owner, agent or contractor thereof;
- 16 (F) upon application for a commercial driver's license under
17 K.S.A. 8-2,125 through 8-2,142, and amendments thereto;
- 18 (G) to aid in determining the petitioner's qualifications to be an
19 employee of the state gaming agency;
- 20 (H) to aid in determining the petitioner's qualifications to be an
21 employee of a tribal gaming commission or to hold a license issued
22 pursuant to a tribal-state gaming compact;
- 23 (I) in any application for registration as a broker-dealer, agent,
24 investment adviser or investment adviser representative all as defined
25 in K.S.A. 17-12a102, and amendments thereto;
- 26 (J) in any application for employment as a law enforcement officer
27 as defined in K.S.A. 22-2202 or 74-5602, and amendments thereto; or
- 28 (K) for applications received on and after July 1, 2006, to aid in
29 determining the petitioner's qualifications for a license to carry a
30 concealed weapon pursuant to the personal and family protection act,
31 K.S.A. 20092010 Supp. 75-7c01 et seq., and amendments thereto;
- 32 (3) the court, in the order of expungement, may specify other
33 circumstances under which the conviction is to be disclosed;
- 34 (4) the conviction may be disclosed in a subsequent prosecution
35 for an offense which requires as an element of such offense a prior
36 conviction of the type expunged; and
- 37 (5) upon commitment to the custody of the secretary of
38 corrections, any previously expunged record in the possession of the
39 secretary of corrections may be reinstated and the expungement

1 disregarded, and the record continued for the purpose of the new
2 commitment.

3 (g) Whenever a person is convicted of a crime, pleads guilty and
4 pays a fine for a crime, is placed on parole, postrelease supervision or
5 probation, is assigned to a community correctional services program, is
6 granted a suspended sentence or is released on conditional release, the
7 person shall be informed of the ability to expunge the arrest records or
8 conviction. Whenever a person enters into a diversion agreement, the
9 person shall be informed of the ability to expunge the diversion.

10 (h) Subject to the disclosures required pursuant to subsection (f),
11 in any application for employment, license or other civil right or
12 privilege, or any appearance as a witness, a person whose arrest
13 records, conviction or diversion of a crime has been expunged under
14 this statute may state that such person has never been arrested,
15 convicted or diverted of such crime, but the expungement of a felony
16 conviction does not relieve an individual of complying with any state or
17 federal law relating to the use or possession of firearms by persons
18 convicted of a felony.

19 (i) Whenever the record of any arrest, conviction or diversion has
20 been expunged under the provisions of this section or under the
21 provisions of any other existing or former statute, the custodian of the
22 records of arrest, conviction, diversion and incarceration relating to that
23 crime shall not disclose the existence of such records, except when
24 requested by:

25 (1) The person whose record was expunged;

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

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

32 (4) the secretary of social and rehabilitation services, or a designee
33 of the secretary, for the purpose of obtaining information relating to
34 employment in an institution, as defined in K.S.A. 76-12a01, and
35 amendments thereto, of the department of social and rehabilitation
36 services of any person whose record has been expunged;

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

39 (6) a prosecutor, and such request is accompanied by a statement

1 that the request is being made in conjunction with a prosecution of an
2 offense that requires a prior conviction as one of the elements of such
3 offense;

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

10 (8) the Kansas lottery, and the request is accompanied by a
11 statement that the request is being made to aid in determining
12 qualifications for employment with the Kansas lottery or for work in
13 sensitive areas within the Kansas lottery as deemed appropriate by the
14 executive director of the Kansas lottery;

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

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

31 (11) the Kansas sentencing commission;

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

37 (13) the Kansas securities commissioner or a designee of the
38 commissioner, and the request is accompanied by a statement that the
39 request is being made in conjunction with an application for

1 registration as a broker-dealer, agent, investment adviser or investment
2 adviser representative by such agency and the application was
3 submitted by the person whose record has been expunged;

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

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

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 carry a concealed weapon pursuant to the
16 personal and family protection act; *or*

17 (17) *The Kansas bureau of investigation for the purposes of:*

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

21 (B) *providing information or doocumentation to the federal*
22 *bureau of investigation, in connection with the national instant*
23 *criminal background check system, to determine a person's*
24 *qualification to possess a firearm.*

25 (j) *The provisions of subsection (i)(17) shall apply to records*
26 *created prior to, **on** and after July 1, 2011.*

27 Sec. 8. K.S.A. 22-4701 and 22-4705 and K.S.A. 2010 Supp. 12-
28 4516a, 22-2410 and 38-2312 and section 254 of chapter 136 or the
29 2010 Session Laws of Kansas are hereby repealed.

30 Sec. 9. This act shall take effect and be in force from and after its
31 publication in the statute book.

32