

HOUSE BILL No. 2611

By Representatives Cox, Curtis, Finney, Hoheisel, Samsel and Stogsdill

2-11

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to expungement; automatically expunging certain convictions;
3 amending K.S.A. 2019 Supp. 12-4516 and 21-6614 and repealing the
4 existing sections.

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

7 Section 1. K.S.A. 2019 Supp. 12-4516 is hereby amended to read as
8 follows: 12-4516. (a) (1) Except as provided in subsections ~~(b), (c),~~ (d),
9 (e) and (f), any ~~person who has been convicted~~ *conviction and related*
10 *arrest records* of a violation of a city ordinance of this state ~~may petition~~
11 ~~the convicting court for the expungement of such conviction and related~~
12 ~~arrest records~~ *shall be automatically expunged by the convicting court if*
13 *three or more years have elapsed since the person convicted of such*
14 *offense:*

15 (A) Satisfied the sentence imposed; or

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

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

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

28 (b) Any person convicted of a violation of any ordinance that is
29 prohibited by either K.S.A. 2019 Supp. 12-16,134(a) or (b), and
30 amendments thereto, and which was adopted prior to July 1, 2014, or who
31 entered into a diversion agreement in lieu of further criminal proceedings
32 for such violation, may petition the convicting court for the expungement
33 of such conviction or diversion agreement and related arrest records.

34 (c) Any person convicted of the violation of a city ordinance which
35 would also constitute a violation of K.S.A. 21-3512, prior to its repeal, or a
36 violation of K.S.A. 2019 Supp. 21-6419, and amendments thereto, or who

1 entered into a diversion agreement in lieu of further criminal proceedings
2 for such violation, may petition the convicting court for the expungement
3 of such conviction or diversion agreement and related arrest records if:

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

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

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

18 (1) Vehicular homicide, as defined by K.S.A. 21-3405, prior to its
19 repeal, or K.S.A. 2019 Supp. 21-5406, and amendments thereto;

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

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

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

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

29 (6) failing to stop at the scene of an accident and perform the duties
30 required by K.S.A. ~~8-1602~~, 8-1603, prior to its repeal, or *K.S.A. 8-1602 or*
31 *8-1604*, and amendments thereto;

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

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

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

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

1 sentence, if such person was convicted of a second or subsequent violation
2 of a city ordinance which would also constitute a second or subsequent
3 violation of K.S.A. 8-1567, and amendments thereto.

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

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

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

14 (A) Defendant's full name;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 pursuant to a tribal-state gaming compact;

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

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

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

11 (L) for applications received on and after July 1, 2016, to aid in
12 determining the petitioner's qualifications for a license to act as a bail
13 enforcement agent pursuant to K.S.A. 75-7e01 through 75-7e09, *and*
14 *amendments thereto*, and K.S.A. 2019 Supp. 50-6,141, and amendments
15 thereto;

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

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

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

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

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

38 (1) The person whose record was expunged;

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

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

1 whose record has been expunged;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (B) act as a bail enforcement agent pursuant to K.S.A. 75-7e01
 15 through 75-7e09, *and amendments thereto*, and K.S.A. 2019 Supp. 50-
 16 6,141, and amendments thereto;

17 (14) the Kansas sentencing commission;

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

22 (16) a law enforcement agency and the request is accompanied by a
 23 statement that the request is being made to aid in determining eligibility
 24 for employment as a law enforcement officer as defined by K.S.A. 22-
 25 2202, and amendments thereto.

26 Sec. 2. K.S.A. 2019 Supp. 21-6614 is hereby amended to read as
 27 follows: 21-6614. (a) (1) Except as provided in subsections ~~(b)~~, (c), (d),
 28 (e) and (f), ~~any person convicted~~ *conviction and related arrest records* in
 29 this state of a traffic infraction, cigarette or tobacco infraction,
 30 misdemeanor or a class D or E felony, or for crimes committed on or after
 31 July 1, 1993, any nongrid felony or felony ranked in severity levels 6
 32 through 10 of the nondrug grid, or for crimes committed on or after July 1,
 33 1993, but prior to July 1, 2012, any felony ranked in severity level 4 of the
 34 drug grid, or for crimes committed on or after July 1, 2012, any felony
 35 ranked in severity level 5 of the drug grid ~~may petition the convicting~~
 36 ~~court for the expungement of such conviction or related arrest records~~
 37 *shall be automatically expunged by the convicting court* if three or more
 38 years have elapsed since the person *convicted of such offense*: (A)
 39 Satisfied the sentence imposed; or (B) was discharged from probation, a
 40 community correctional services program, parole, postrelease supervision,
 41 conditional release or a suspended sentence.

42 (2) *The county or district attorney in the convicting court shall file a*
 43 *petition with the court stating the information described in subsection (g).*

1 *No docket fee shall be charged for filing a petition pursuant to this*
2 *paragraph. Upon receiving such petition, the court shall order such*
3 *conviction and related arrest records expunged.*

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

9 (b) Any person convicted of prostitution, as defined in K.S.A. 21-
10 3512, prior to its repeal, convicted of a violation of K.S.A. 2019 Supp. 21-
11 6419, and amendments thereto, or who entered into a diversion agreement
12 in lieu of further criminal proceedings for such violation, may petition the
13 convicting court for the expungement of such conviction or diversion
14 agreement and related arrest records if:

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

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

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

37 (1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its
38 repeal, or K.S.A. 2019 Supp. 21-5406, and amendments thereto, or as
39 prohibited by any law of another state which is in substantial conformity
40 with that statute;

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

1 any law of another state which is in substantial conformity with that
2 statute;

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

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

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

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

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

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

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

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

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

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

38 (1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.
39 2019 Supp. 21-5503, and amendments thereto;

40 (2) indecent liberties with a child or aggravated indecent liberties
41 with a child, as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal,
42 or K.S.A. 2019 Supp. 21-5506, and amendments thereto;

43 (3) criminal sodomy, as defined in K.S.A. 21-3505(a)(2) or (a)(3),

1 prior to its repeal, or K.S.A. 2019 Supp. 21-5504(a)(3) or (a)(4), and
2 amendments thereto;

3 (4) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior
4 to its repeal, or K.S.A. 2019 Supp. 21-5504, and amendments thereto;

5 (5) indecent solicitation of a child or aggravated indecent solicitation
6 of a child, as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal,
7 or K.S.A. 2019 Supp. 21-5508, and amendments thereto;

8 (6) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior
9 to its repeal, or K.S.A. 2019 Supp. 21-5510, and amendments thereto;

10 (7) internet trading in child pornography or aggravated internet
11 trading in child pornography, as defined in K.S.A. 2019 Supp. 21-5514,
12 and amendments thereto;

13 (8) aggravated incest, as defined in K.S.A. 21-3603, prior to its
14 repeal, or K.S.A. 2019 Supp. 21-5604, and amendments thereto;

15 (9) endangering a child or aggravated endangering a child, as defined
16 in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2019 Supp.
17 21-5601, and amendments thereto;

18 (10) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal,
19 or K.S.A. 2019 Supp. 21-5602, and amendments thereto;

20 (11) capital murder, as defined in K.S.A. 21-3439, prior to its repeal,
21 or K.S.A. 2019 Supp. 21-5401, and amendments thereto;

22 (12) murder in the first degree, as defined in K.S.A. 21-3401, prior to
23 its repeal, or K.S.A. 2019 Supp. 21-5402, and amendments thereto;

24 (13) murder in the second degree, as defined in K.S.A. 21-3402, prior
25 to its repeal, or K.S.A. 2019 Supp. 21-5403, and amendments thereto;

26 (14) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to
27 its repeal, or K.S.A. 2019 Supp. 21-5404, and amendments thereto;

28 (15) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to
29 its repeal, or K.S.A. 2019 Supp. 21-5405, and amendments thereto;

30 (16) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal,
31 or K.S.A. 2019 Supp. 21-5505, and amendments thereto, when the victim
32 was less than 18 years of age at the time the crime was committed;

33 (17) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to
34 its repeal, or K.S.A. 2019 Supp. 21-5505, and amendments thereto;

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

37 (19) any conviction for any offense in effect at any time prior to July
38 1, 2011, that is comparable to any offense as provided in this subsection.

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

1 offender registration act.

2 (g) (1) When a petition for expungement is filed *and the conviction is*
3 *not automatically expunged pursuant to subsection (a)*, the court shall set a
4 date for a hearing of such petition and shall cause notice of such hearing to
5 be given to the prosecutor and the arresting law enforcement agency. The
6 petition shall state the:

7 (A) Defendant's full name;

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

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

11 (D) crime for which the defendant was arrested, convicted or
12 diverted;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 pursuant to a tribal-state gaming compact;

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

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

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

10 (L) to aid in determining the petitioner's qualifications for a license to
11 act as a bail enforcement agent pursuant to K.S.A. 75-7e01 through 75-
12 7e09 and K.S.A. 2019 Supp. 50-6,141, and amendments thereto;

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

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

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

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

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

34 (2) Notwithstanding the provisions of subsection (k)(1), and except as
35 provided in K.S.A. 2019 Supp. 21-6304(a)(3)(A), and amendments
36 thereto, the expungement of a prior felony conviction does not relieve the
37 individual of complying with any state or federal law relating to the use,
38 shipment, transportation, receipt or possession of firearms by persons
39 previously convicted of a felony.

40 (l) Whenever the record of any arrest, conviction or diversion has
41 been expunged under the provisions of this section or under the provisions
42 of any other existing or former statute, the custodian of the records of
43 arrest, conviction, diversion and incarceration relating to that crime shall

1 not disclose the existence of such records, except when requested by:

2 (1) The person whose record was expunged;

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

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

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

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

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

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

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

37 (10) the Kansas racing and gaming commission, or a designee of the
38 commission, and the request is accompanied by a statement that the
39 request is being made to aid in determining qualifications of the following
40 under the Kansas expanded lottery act: (A) Lottery gaming facility
41 managers and prospective managers, racetrack gaming facility managers
42 and prospective managers, licensees and certificate holders; and (B) their
43 officers, directors, employees, owners, agents and contractors;

1 (11) the Kansas sentencing commission;

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

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

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

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

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

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

26 (B) act as a bail enforcement agent pursuant to K.S.A. 75-7e01
27 through 75-7e09 and K.S.A. 2019 Supp. 50-6,141, and amendments
28 thereto; or

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

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

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

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

38 Sec. 3. K.S.A. 2019 Supp. 12-4516 and 21-6614 are hereby repealed.

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