

**HOUSE BILL No. 2443**

By Representatives Newton and Patterson, Dahl, Merrick, Judy  
Morrison and Toplikar

2-7

10 AN ACT concerning criminal procedure; relating to the removal of fin-  
11 gerprints from the records; amending K.S.A. 21-2501 and K.S.A. 2000  
12 Supp. 12-4516a and 22-2410 and repealing the existing sections.  
13

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

15 Section 1. K.S.A. 2000 Supp. 12-4516a is hereby amended to read  
16 as follows: 12-4516a. (a) Any person who has been arrested on a viola-  
17 tion of a city ordinance of this state may petition the court for the  
18 expungement *and deletion* of such arrest record. *If such person has been*  
19 *fingerprinted, the person may also petition the court for the deletion of*  
20 *such fingerprints from any criminal justice agency records.*

21 (b) When a petition for expungement is filed, the court shall set a  
22 date for hearing on such petition and shall cause notice of such hearing  
23 to be given to the prosecuting attorney and the arresting law enforcement  
24 agency. The petition shall state: (1) The petitioner's full name;

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

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

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

29 (5) the date of the petitioner's arrest, and

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

31 A municipal court may prescribe a fee to be charged as costs for a  
32 person petitioning for an order of expungement pursuant to this section.  
33 Any person who may have relevant information about the petitioner may  
34 testify at the hearing. The court may inquire into the background of the  
35 petitioner.

36 (c) At the hearing on a petition for expungement:

37 (1) The court shall order the arrest record and subsequent court pro-  
38 ceedings, if any, expunged *and deleted and the deletion of fingerprints*  
39 *from criminal justice agency records*, upon finding:

40 ~~(1)(A)~~ The arrest occurred because of mistaken identity;

41 ~~(2)(B)~~ a court has found that there was no probable cause for the  
42 arrest;

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

1 ~~(4)(C)~~ the expungement would be in the best interests of justice and  
2 ~~(A)(i)~~ Charges have been dismissed; or ~~(B)(ii)~~ no charges have been or  
3 are likely to be filed;

4 (2) *the court may order the arrest record and subsequent court pro-*  
5 *ceedings, if any, expunged and deleted and the deletion of fingerprints*  
6 *from criminal justice agency records, upon finding the petitioner was*  
7 *found not guilty in court proceedings.*

8 (d) When the court has ordered expungement *and deletion* of an  
9 arrest record ~~and~~, subsequent court proceedings, if any, *and the deletion*  
10 *of fingerprints from criminal justice agency records*, the order shall state  
11 the information required to be stated in the petition and shall state the  
12 grounds for expungement under subsection (c). The clerk of the court  
13 shall send a certified copy of the order to the federal bureau of investi-  
14 gation, the Kansas bureau of investigation, the secretary of corrections  
15 and any other criminal justice agency which may have a record of the  
16 arrest *or fingerprints*. If an order of expungement is entered, the peti-  
17 tioner shall be treated as not having been arrested. *If an order of deletion*  
18 *is entered, any criminal justice agency that is in possession of such fin-*  
19 *gerprints shall delete the fingerprints from such agency's records.*

20 ~~(e) If the ground for expungement is as provided in subsection (c)(4),~~  
21 ~~the court shall determine whether, in the interest of public welfare, the~~  
22 ~~records should be available for any of the following purposes: (1) In any~~  
23 ~~application for employment as a detective with a private detective agency,~~  
24 ~~as defined by K.S.A. 75-7b01 and amendments thereto; as security per-~~  
25 ~~sonnel with a private patrol operator, as defined by K.S.A. 75-7b01 and~~  
26 ~~amendments thereto; or with an institution, as defined in K.S.A. 76-12a01~~  
27 ~~and amendments thereto, of the department of social and rehabilitation~~  
28 ~~services;~~

29 ~~—(2) in any application for admission, or for an order of reinstatement,~~  
30 ~~to the practice of law in this state;~~

31 ~~—(3) to aid in determining the petitioner's qualifications for employ-~~  
32 ~~ment with the Kansas lottery or for work in sensitive areas within the~~  
33 ~~Kansas lottery as deemed appropriate by the executive director of the~~  
34 ~~Kansas lottery;~~

35 ~~—(4) to aid in determining the petitioner's qualifications for executive~~  
36 ~~director of the Kansas racing commission, for employment with the com-~~  
37 ~~mission or for work in sensitive areas in parimutuel racing as deemed~~  
38 ~~appropriate by the executive director of the commission, or to aid in~~  
39 ~~determining qualifications for licensure or renewal of licensure by the~~  
40 ~~commission;~~

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

43 ~~—(6) to aid in determining the petitioner's qualifications to be an em-~~

1 ~~ployee of the state gaming agency;~~

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

5 ~~—(8) in any other circumstances which the court deems appropriate.~~

6 ~~—(f) Subject to any disclosures required under subsection (e);~~

7 (e) In any application for employment, license or other civil right or  
8 privilege, or any appearance as a witness, a person whose arrest records  
9 have been expunged as provided in this section may state that such person  
10 has never been arrested.

11 ~~(g) Whenever a petitioner's arrest records have been expunged as~~  
12 ~~provided in this section, the custodian of the records of arrest, incarceration~~  
13 ~~due to arrest or court proceedings related to the arrest, shall not~~  
14 ~~disclose the arrest or any information related to the arrest, except as~~  
15 ~~directed by the order of expungement or when requested by the person~~  
16 ~~whose arrest record was expunged.~~

17 Sec. 2. K.S.A. 21-2501 is hereby amended to read as follows: 21-  
18 2501. (a) It is hereby made the duty of every sheriff, police department  
19 or countywide law enforcement agency in the state, immediately to cause  
20 two sets of fingerprint impressions to be made of a person who is arrested  
21 if the person:

22 (1) Is wanted for the commission of a felony. On or after July 1, 1993,  
23 fingerprints shall be taken if the person is wanted for the commission of  
24 a felony or a class A or B misdemeanor or assault as defined in K.S.A.  
25 21-3408 and amendments thereto or a violation of a county resolution  
26 which would be the equivalent of a class A or B misdemeanor or assault  
27 as defined in K.S.A. 21-3408 and amendments thereto under state law;

28 (2) is believed to be a fugitive from justice;

29 (3) may be in the possession at the time of arrest of any goods or  
30 property reasonably believed to have been stolen by the person;

31 (4) is in possession of firearms or other concealed weapons, burglary  
32 tools, high explosives or other appliances believed to be used solely for  
33 criminal purposes;

34 (5) is wanted for any offense which involves sexual conduct prohibited  
35 by law or for violation of the uniform controlled substances act; or

36 (6) is suspected of being or known to be a habitual criminal or violator  
37 of the intoxicating liquor law.

38 (b) The court shall ensure, upon the offender's first appearance, or  
39 in any event before final disposition of a felony or an A or B misdemeanor  
40 or a violation of a county resolution which prohibits an act which is pro-  
41 hibited by a class A or B misdemeanor, that the offender has been pro-  
42 cessed and fingerprinted.

43 (c) Fingerprint impressions taken pursuant to this section shall be

1 made on the forms provided by the department of justice of the United  
2 States or the Kansas bureau of investigation. The sheriff, police depart-  
3 ment or countywide law enforcement agency shall cause the impressions  
4 to be forwarded to the Kansas bureau of investigation at Topeka, Kansas,  
5 which shall forward one set of the impressions to the federal bureau of  
6 investigation, department of justice, at Washington, D.C. A comprehen-  
7 sive description of the person arrested and such other data and infor-  
8 mation as to the identification of such person as the department of justice  
9 and bureau of investigation require shall accompany the impressions.

10 (d) A sheriff, police department or countywide law enforcement  
11 agency may take and retain for its own use copies of fingerprint impres-  
12 sions of a person specified in subsection (a), together with a comprehen-  
13 sive description and such other data and information as necessary to prop-  
14 erly identify such person.

15 (e) Except as provided in subsection (a)(1), this section shall not be  
16 construed to include violators of any county resolution or municipal  
17 ordinance.

18 (f) *Such fingerprints may be required to be deleted pursuant to K.S.A.*  
19 *2000 Supp. 12-4516a and 22-2410, and amendments thereto.*

20 Sec. 3. K.S.A. 2000 Supp. 22-2410 is hereby amended to read as  
21 follows: 22-2410. (a) Any person who has been arrested in this state may  
22 petition the district court for the expungement *and deletion* of such arrest  
23 record. *If such person has been fingerprinted, the person may also petition*  
24 *the court for the deletion of such fingerprints from any criminal justice*  
25 *agency records.*

26 (b) When a petition for expungement is filed, the court shall set a  
27 date for hearing on such petition and shall cause notice of such hearing  
28 to be given to the prosecuting attorney and the arresting law enforcement  
29 agency. The petition shall state: (1) The petitioner's full name;

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

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

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

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

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

36 There shall be no docket fee for filing a petition pursuant to this sec-  
37 tion. Any person who may have relevant information about the petitioner  
38 may testify at the hearing. The court may inquire into the background of  
39 the petitioner.

40 (c) At the hearing on a petition for expungement:

41 (1) The court shall order the arrest record and subsequent court pro-  
42 ceedings, if any, expunged *and deleted and the deletion of fingerprints*  
43 *from criminal justice agency records*, upon finding:

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2 ~~(2)(B)~~ a court has found that there was no probable cause for the  
3 arrest;

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

5 ~~(4)(C)~~ the expungement would be in the best interests of justice and  
6 ~~(A)(i)~~ Charges have been dismissed; or ~~(B)(ii)~~ no charges have been or  
7 are likely to be filed; or

8 (2) *the court may order the arrest record and subsequent court pro-*  
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10 *from criminal justice agency records, upon finding the petitioner was*  
11 *found not guilty in court proceedings.*

12 (d) When the court has ordered expungement *and deletion* of an  
13 arrest record ~~and~~, subsequent court proceedings, if any, *and the deletion*  
14 *of fingerprints from criminal justice agency records*, the order shall state  
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16 grounds for expungement under subsection (c). The clerk of the court  
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19 and any other criminal justice agency which may have a record of the  
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24 ~~(e)~~ ~~If the ground for expungement is as provided in subsection (c)(4),~~  
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26 ~~records should be available for any of the following purposes: (1) In any~~  
27 ~~application for employment as a detective with a private detective agency,~~  
28 ~~as defined in K.S.A. 75-7b01 and amendments thereto; as security per-~~  
29 ~~sonnel with a private patrol operator, as defined by K.S.A. 75-7b01 and~~  
30 ~~amendments thereto; or with an institution, as defined in K.S.A. 76-12a01~~  
31 ~~and amendments thereto, of the department of social and rehabilitation~~  
32 ~~services;~~

33 ~~—(2) in any application for admission, or for an order of reinstatement,~~  
34 ~~to the practice of law in this state;~~

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42 ~~appropriate by the executive director of the commission, or to aid in~~  
43 ~~determining qualifications for licensure or renewal of licensure by the~~

1 commission;

2 ~~—(5) in any application for a commercial driver's license under K.S.A.~~  
3 ~~8-2,125 through 8-2,142 and amendments thereto;~~

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8 ~~to a tribal state gaming compact; or~~

9 ~~—(8) in any other circumstances which the court deems appropriate.~~

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11 (e) In any application for employment, license or other civil right or  
12 privilege, or any appearance as a witness, a person whose arrest records  
13 have been expunged as provided in this section may state that such person  
14 has never been arrested.

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17 ~~due to arrest or court proceedings related to the arrest, shall not~~  
18 ~~disclose the arrest or any information related to the arrest, except as~~  
19 ~~directed by the order of expungement or when requested by the person~~  
20 ~~whose arrest record was expunged.~~

21 Sec. 4. K.S.A. 21-2501 and K.S.A. 2000 Supp. 12-4516a and 22-2410  
22 are hereby repealed.

23 Sec. 5. This act shall take effect and be in force from and after its  
24 publication in the statute book.

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