

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Vice-Chairman Lance Kinzer at 3:30 P.M. on February 11, 2008 in Room 313-S of the Capitol.

All members were present except:

Marti Crow - excused
Annie Kuether- excused
Joe Patton - excused
Dick Proehl- excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research
Athena Andaya, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Jason Thompson, Office of Revisor of Statutes
Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:

Christopher Buck, Enterprise Car Rental
Don McNeely, Kansas Automobile Dealers Association
Rob Linderer, CEO, Midwest Transplant Network
Mack Smith, Executive Secretary, Mortuary Arts Board

The hearing on **HB 2707 - theft, intent to deprive, leased or rented motor vehicles**, was opened.

Christopher Buck, Enterprise Car Rental, commented that Kansas is one of only six states that requires businesses who lease or rent personal property to wait 10 days before reporting a vehicle stolen. In the last two years, Enterprise has incurred 122 incidents where they had to report a vehicle stolen. The proposed bill would allow for a report to be filed three days after the vehicle is scheduled to be turned back in. This shortened filing time would possibly allow for the police to find the vehicle sooner. (Attachment #1)

Don McNeely, Kansas Automobile Dealers Association, appeared before the committee in support of the proposed bill. He requested an amendment to expand the legislation to include dealership demonstrators and service loaner vehicles. (Attachment #2)

The hearing on **HB 2707** was closed.

The hearing on **HB 2768 - dead human bodies, removal and delivery**, was opened.

Rob Linderer, CEO, Midwest Transplant Network, explained that the bill would add their organization as a place which could receive a dead body. The body would be transported from the location of where the death occurred to their facility. This would allow for the removal of donated tissues from the deceased donor in a shorter amount of time. Currently this is done in the operating room at the hospital where the death occurred. (Attachment #3)

Mack Smith, Executive Secretary, Mortuary Arts Board, spoke in support of the proposed bill. (Attachment #4)

The hearing on **HB 2768** was closed.

HB 2545 - controlled substances, ecstasy

Additional information on expungement concerning juveniles was provided by the Kansas Association of Criminal Defense Lawyers (Attachment #5)

Representative Pauls provided the committee a balloon (Attachment #6) that would make a second or subsequent conviction of the use of ecstasy a felony and report favorably as Substitute HB 2545. Representative Ward seconded the motion. Committee discussed expungement of juvenile records. The motion carried.

The committee meeting adjourned at 4:45 p.m. The next meeting was scheduled for February 12, 2008.

TESTIMONY
CHRIS BUCK, ENTERPRISE CAR RENTAL
HOUSE JUDICIARY COMMITTEE
HB 2707
February 11, 2008

Mr. Chairman, Members of the Committee, my name is Chris Buck and I am pleased to appear today to support HB 2707. I serve as the Loss Control Manager for Enterprise Car Rental in Johnson County.

HB 2707 amends K.S.A. 21-3702 – Prima facie evidence of intent to permanently deprive an owner of property, to provide for a 3 day written demand in the case of a rental car that is not returned. Current law provides for a 10 day notice. Kansas is one of only 6 states that require a person who leases or rents personal property to wait 10 days prior to reporting the deprivation of property to local law enforcement. Under the current statute there are several issues that the 10 day hold time can create and be cause for concern not only for the businesses who engage in leasing or renting property but safety concerns to the general public.

In the last 2 years Enterprise has incurred 122 incidents where a vehicle had to be reported stolen due to the failure of the renter not returning. To illustrate how the current statute can cause a concern for public safety, I offer one of the several examples, of a situation, that if the statute was changed to the proposed bill being presented today could possibly been avoided.

On or about July 3, 2007 I received a visit from 2 Kansas City detectives inquiring on a vehicle owned by Enterprise Leasing Company of KS. Per the detectives this vehicle was being investigated for suspicious activity. I received the plate number in question from the detectives and quickly noticed that this was a vehicle we were currently in the process of following the steps under the current statute 21-3702 to report the vehicle stolen. At this time we had already sent notice on June 29, 2007 (four days earlier), demanding the return of the rental vehicle but still had (6) six additional days to wait before being able to report stolen to local law enforcement. The officers commented that if it had been reported it would have given them probable cause to pull over vehicle and individual operating would likely have been arrested with the vehicle being impounded. However, since the unit had not yet been reported as stolen, to local law enforcement, all the detectives could do is note the plate should they encounter the vehicle at a future time. On July 5, 2007, the same vehicle was involved in a drive by shooting critically injuring 4 individuals 2 with life threatening injuries. The vehicle Enterprise was in the process of reporting stolen 4 days later sustained \$14,025 in damage after it hit a pole and was left abandoned. The vehicle that the 4 innocent individuals occupied is currently on hold with KCK police and sustained approximately \$5,000 in damage. The renter of the vehicle claims no involvement, stating “the car was taken from her the day before.” The renter as not been charged as the case is still under investigation.

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Attachment # 1

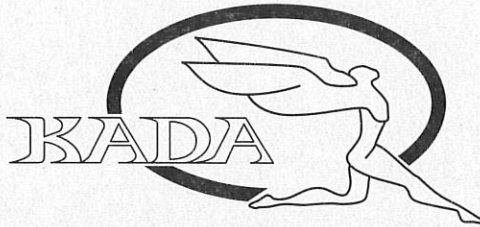
HB 2707 will allow situations as I previously mentioned to be prevented in the future. If the situation previously mentioned would have occurred in Missouri, Nebraska, Iowa, Illinois, Oklahoma, Texas, or Colorado it likely would have been prevented due to the fact each of those states will allow property that is leased and or rented (specifically leased or rented vehicles) to be reported stolen in 3 days or less from the date written demand was sent.

Based upon our research, more than half of the States (29 to be exact) have a statute currently on the books allowing companies or persons who rent or lease personal property to report a vehicle stolen in 3 days or less with another 10 states at 5 days.

Bottom line, In my 13 years of experience managing this area of the business for Enterprise Rent-A-Car covering 7 states, the person trying to deprive Enterprise of their property are often involved in some sort of criminal activity. The longer that person has before legal action can proceed the more likely they are to cause unnecessary property damage or harm to others, as previously mentioned.

I urge for your support on HB 2707.

State	Days/Time	State Source
AK	5 Days	AS 28.35.026
AL	48 Hours	Code of Alabama 13A-8-142
AR	5 Days	
AZ	3 Days	AZ 13-1806A & 13-1806D
CA	5 Days	Vehicle Code 10855
CO	72 hours	Colorado Revised Statute 18-4-402
CT	192 hours (8 days)	PA 06-118—sHB 5611
DE	10 days	11 Del.C. 841, Section 849
FL	72 hours (3 days)	FL Statute 812.155
GA	48 Hours	Code of GA 16-8-2 and 16-8-4
HI	48 Hours	HRS: 708-837
IA	72 hrs	Iowa code 714.1
ID	48 Hours	Idaho Statute 18-2404
IL	3 Days	720 ILCS S5/16-3(b)
IN	72 hours (3 days)	Indiana Code 35-43-4-4
KS	10 days	KS Statute 21-3702
KY	10 days	no specefic
LA	7 days	RS 14:220
MA	10 days	Chapter 266, Section 87
MD	10 days	Article 7-205 of the Maryland Annotated Code
ME	5 days	
MI	5 days	No specific legislature-Legal opion - 5 days is reasonable
MN	5 days	MN Statute 609.52 & 65B.49
MO	3 Days	MO Statute 578.150
MS	10 days	MS CODE 92-23-27; 97-77-64
MT	72 hours	Section 45-6-309 Montana Code
NC	72 hours	GS: 14-168.5
ND	72 hours	Chapter 12.1-23 of the North Dakota Century Code
NE	72 hours	Nebraska State Penal Code
NH	5 days	
NJ	5 Days	
NM	72 hours	Section 30-16-40 Fraudulent refusal to return a leased vehicle
NV	72 hours	NRS 205-312
NY	7 days	
OH	5days	Section 2913.01 of the Ohio Motor Vehicle Law
OK	2 days 48 hours	
OR	3 Days	ORS: 164.140
PA	7 days	Section 3932 c (2) Theft of leased property
RI	Upon Rental Expiration	no specefic
SC	72 hours	SC Code 16-13-420
SD	Need Certified letter returned	
TN	Upon Rental Expiration	No specific
TX	3 Days	TX Penal Code Section 31.04 (B) (4) (b)- Theft of Service
UT	72 hours	Utah Criminal and Traffic code 76-6-410.5 (2)
VA	5 days	18.2-117. Failure of bailee to return vehicle or boat.
VT	72 hours	H.739 Failure to return rental automobiles
WA	72 hours/3 days	RCW: 9A.56.096
WI	Upon Rental Expiration	WI State Statute 943.20(1)(e)
WV	72 hours	17-A-8-10
WY	72 hours	No specific



KANSAS AUTOMOBILE DEALERS ASSOCIATION

February 11, 2008

To: Chairman Mike O'Neal and Members of the House Judiciary Committee

From: Don McNeely, KADA President *DM*

Re: House Bill 2707 – An act relating to crimes and punishments; concerning theft of property; intent to deprive

Good afternoon Chairman O'Neal and Members of the House Transportation Committee. I am Don McNeely and I serve as the President of the Kansas Automobile Dealers Association. With me today is Whitney Damron, our legislative counsel and Pat Barnes, our legal counsel.

KADA stands before you today in support of HB 2707, which addresses the failure to return a lease or rented motor vehicle in a prompt manner after appropriate notice or demand. Many of the Kansas franchised new car and truck dealers are also in the business of renting and leasing motor vehicles, and this matter is also of concern to the KADA membership.

In addition, we respectfully request the committee's consideration and adoption of our attached proposed amendment to HB 2707, which would expand the legislation to include dealership demonstrators and service loaner vehicles.

On behalf of the Kansas Automobile Dealers Association, I wish to thank you for your consideration of this legislation.

Attachment

731 S. Kansas Ave. • Topeka, KS 66603-3807 House Judiciary
Telephone (785) 233-6456 • Fax (785) 233-1414 Date 2-11-08
Attachment # 2

HOUSE BILL No. 2707

By Committee on Transportation

1-30

9 AN ACT relating to crimes and punishments; concerning theft of prop-
10 erty; intent to deprive; amending K.S.A. 21-3702 and repealing the
11 existing section.
12

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

14 Section 1. K.S.A. 21-3702 is hereby amended to read as follows: 21-
15 3702. (a) In any prosecution under this article, the following shall be
16 prima facie evidence of intent to permanently deprive the owner or lessor
17 of property of the possession, use or benefit thereof:

18 (1) The giving of a false identification or fictitious name, address or
19 place of employment at the time of obtaining control over the property;

20 (2) the failure of a person who leases or rents personal property to
21 return the same within 10 days after the date set forth in the lease or
22 rental agreement for the return of the property, if notice is given to the
23 person renting or leasing the property to return the property within seven
24 days after receipt of the notice, in which case the subsequent return of
25 the property within the seven-day period shall exempt such transaction
26 from consideration as prima facie evidence as provided in this section;

27 (3) destroying, breaking or opening a lock, chain, key switch, enco-
28 sure or other device used to secure the property in order to obtain control
29 over the property; or

30 (4) destruction of or substantially damaging or altering the property
31 so as to make the property unusable or unrecognizable in order to obtain
32 control over the property; or

(6) 33 ~~(5) the failure of a person who leases or rents from a commercial~~
34 ~~renter a motor vehicle under a written agreement that provides for the~~
35 ~~return of the motor vehicle to a particular place at a particular time, if~~
36 ~~notice has been given to the person renting or leasing the motor vehicle~~
37 ~~within three calendar days from the date of the receipt or refusal of the~~
38 ~~demand. In addition, if such vehicle has not been returned after demand,~~
39 ~~the lessor may notify the local law enforcement agency of the failure of~~
40 ~~the lessee to return such motor vehicle and the local law enforcement~~
41 ~~agency shall cause such motor vehicle to be put into any appropriate state~~
42 ~~and local computer system listing stolen motor vehicles.~~

43 (b) In any prosecution for a misdemeanor under K.S.A. 21-3701 and

(5) the failure of a person who is provided with a use of a vehicle by the owner of the vehicle to return it to the owner pursuant to a written instruction specifying (1) the time and place to return the vehicle; and (2) that failure to comply may be prosecuted as theft, which is delivered to the person by the owner at the time the person is provided with possession of the vehicle; or

or after the receipt of the instruction set forth in subsection (a) (5), the owner or lessor

lessee or person

1 amendments thereto in which the object of the alleged theft is a book or
2 other material borrowed from a library, it shall be prima facie evidence
3 of intent to permanently deprive the owner of the possession, use or
4 benefit thereof if the defendant failed to return such book or material
5 within 30 days after receiving notice from the library requesting its return,
6 in which case the subsequent return of the book or material within the
7 30-day period shall exempt such transaction from consideration as prima
8 facie evidence as provided in this section.

9 (c) The word "notice" as used herein shall be construed to mean
10 notice in writing and such notice in writing will be presumed to have been
11 given three days following deposit of the notice as registered or certified
12 matter in the United States mail, addressed to such person who has leased
13 or rented the personal property or borrowed the library material at the
14 address as it appears in the information supplied by such person at the
15 time of such leasing, renting or borrowing, or to such person's last known
16 address.

17 Sec. 2. K.S.A. 21-3702 is hereby repealed.

18 Sec. 3. This act shall take effect and be in force from and after its
19 publication in the statute book.

**TESTIMONY OF THE MIDWEST TRANSPLANT NETWORK,
BY ROB LINDERER, CHIEF EXECUTIVE OFFICER
BEFORE THE HOUSE JUDICIARY COMMITTEE**

MONDAY, FEBRUARY 11, 2008

IN SUPPORT OF HB 2768

**AN ACT CONCERNING PUBLIC HEALTH AND RELATING TO THE
REMOVAL OF DEAD BODIES**

Mr. Chairman and members of the Judiciary Committee, thank you for allowing me to testify in support of HB 2768. Midwest Transplant Network is a non-profit, federally certified organ procurement organization (OPO) designated to serve the state of Kansas and western Missouri. We provide organ and tissue procurement services to over 230 hospitals. We are members of United Network for Organ Donation (UNOS) which is the organization under federal contract to operate the National Organ Procurement and Transplant Network (OPTN). In addition, we provide tissue and eye recovery services under agreements with multiple FDA-regulated processors and eye banks.

This bill would add my organization as an establishment to which a dead body can be transported from the location where death occurred. This change will enable us to utilize a free-standing facility for the surgical recovery of donated tissues from deceased donors. Traditionally, these recoveries have been done in the operating room at the hospital where the death occurred. This can be disruptive to the hospital's surgery schedule and often results in delays which stretch the resources of all involved. In addition, some tissues can be lost when recovery time limits are exceeded; and time delays create a significant inconvenience for the donor family and funeral home planning final arrangements.

A free-standing facility will enable Midwest Transplant Network to transfer deceased donors out of hospitals to minimize these problems and delays. After the initial donor approval and consent is obtained, the funeral home or transport service will be called to

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transfer the body to Midwest Transplant Network's facility located near KU Medical Center.

With our centralized staff preparing for the arrival of donors, we will gain efficiencies in case set up and surgical recovery and minimize the travel time for our teams of 3 – 4 technicians. We believe this will improve the quality of our services and satisfaction of the donor families, hospitals, funeral homes, Medical Examiners/Coroners and other stakeholders involved in our organization's mission.

In summary, we know this approach can be successful because of our experience with the medical examiner/coroner offices in Sedgwick and Shawnee County. In both of these locations we have facilities to recover non-hospital deaths and occasionally will utilize the facilities to transfer a donor from a hospital. Organizations similar to ours in other parts of the country have established free-standing facilities and report improvements in quality, processes and outcomes, as well as a reduction in operating costs.

Thank you for your time and I will be happy to answer any questions you may have.



The Kansas State Board of Mortuary Arts

Created August 1, 1907

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Mr. Mack Smith, Executive Secretary
Mr. Francis F. Mills, Inspector
Ms. Mary J. Kirkham, Administrative Specialist

Monday, February 11, 2008

The Honorable Michael O'Neal, Chairperson
House Committee on Judiciary
Statehouse, Room 313-S
Topeka, Kansas 66612

Dear Representative O'Neal and Members of the Judiciary Committee:

My name is Mack Smith, and I am the executive secretary to the Kansas State Board of Mortuary Arts. I thank you for the opportunity to testify before the Committee today in support of House Bill 2768.

The current law would add: ". . . federally certified organ procurement organizations serving the state . . ." to the list of approved locations to transport a dead human body from the location of death.

Thank you again for the opportunity to testify before you in favor of the bill, and I will do my best to answer any questions of the committee.

Sincerely,

Mack Smith, Executive Secretary
Kansas State Board of Mortuary Arts

MS

copy: Rob Linderer, CEO, Midwest Transplant Network

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TO: Chairman O'Neal and Members of the House Judiciary Committee

FROM: Jennifer Roth, Kansas Association of Criminal Defense Lawyers

DATE: February 7, 2008

RE: HB 2545 (making Ecstasy a felony, etc.)

On January 28, 2008, at the hearing on HB 2545, Representative Owens asked me about expungement statutes, especially concerning juveniles. I researched this issue and attach two statutes for the Committee's information.

K.S.A. 38-2312 deals with expungement of records for juveniles. In short, a court can order expungement of most juvenile adjudications (including drug offenses) if the juvenile has reached 23 years of age or two years have elapsed since final discharge. The person must meet other requirements as well, such as no new convictions/adjudications. Once the record is expunged, the offense "shall be treated as if it never occurred," except it can be used to calculate a person's criminal history upon a subsequent conviction or adjudication. The expunged record can be disclosed in limited instances, such as when someone is applying for work with certain institutions or applying for certain licenses.

K.S.A. 21-4619 deals with expungement of adult convictions. Currently, an adult cannot petition for expungement of a drug felony or misdemeanor until three or more years have elapsed since the person satisfied his/her sentence or was discharged from supervision. The court may order the conviction expunged if the person meets other requirements, such as no new felony convictions in the past two years and no pending criminal cases. Again, an expunged offense does count toward criminal history in subsequent proceedings. The list of instances in which the custodian of the records and/or the person himself/herself has to disclose an expunged offense is much longer for adult cases than juvenile adjudications.

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38-2312

Chapter 38.--MINORS

Article 23.--REVISED KANSAS JUVENILE JUSTICE CODE

38-2312. Expungement of records. (a) Except as provided in subsection (b), any records or files specified in this code concerning a juvenile may be expunged upon application to a judge of the court of the county in which the records or files are maintained. The application for expungement may be made by the juvenile, if 18 years of age or older or, if the juvenile is less than 18 years of age, by the juvenile's parent or next friend.

(b) There shall be no expungement of records or files concerning acts committed by a juvenile which, if committed by an adult, would constitute a violation of K.S.A. 21-3401, and amendments thereto, murder in the first degree, K.S.A. 21-3402, and amendments thereto, murder in the second degree, K.S.A. 21-3403, and amendments thereto, voluntary manslaughter, K.S.A. 21-3404, and amendments thereto, involuntary manslaughter, K.S.A. 21-3439, and amendments thereto, capital murder, K.S.A. 21-3442, and amendments thereto, involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3502, and amendments thereto, rape, K.S.A. 21-3503, and amendments thereto, indecent liberties with a child, K.S.A. 21-3504, and amendments thereto, aggravated indecent liberties with a child, K.S.A. 21-3506, and amendments thereto, aggravated criminal sodomy, K.S.A. 21-3510, and amendments thereto, indecent solicitation of a child, K.S.A. 21-3511, and amendments thereto, aggravated indecent solicitation of a child, K.S.A. 21-3516, and amendments thereto, sexual exploitation, K.S.A. 21-3603, and amendments thereto, aggravated incest, K.S.A. 21-3608, and amendments thereto, endangering a child, K.S.A. 21-3609, and amendments thereto, abuse of a child, or which would constitute an attempt to commit a violation of any of the offenses specified in this subsection.

(c) When a petition for expungement is filed, the court shall set a date for a hearing on the petition and shall give notice thereof to the county or district attorney. The petition shall state: (1) The juvenile's full name; (2) the full name of the juvenile as reflected in the court record, if different than (1); (3) the juvenile's sex and date of birth; (4) the offense for which the juvenile was adjudicated; (5) the date of the trial; and (6) the identity of the trial court. There shall be no docket fee for filing a petition pursuant to this section. All petitions for expungement shall be docketed in the original action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.

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

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

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

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

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

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

(f) Copies of any order made pursuant to subsection (a) or (c) shall be sent to each public officer and agency in the county having possession of any records or files ordered to be expunged. If the officer or agency fails to comply with the order within a reasonable time after its receipt, the officer or agency may be adjudged in contempt of court and punished accordingly.

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

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

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

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

(1) The person whose record was expunged;

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

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

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

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

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

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

(8) the Kansas sentencing commission.

History: L. 2006, ch. 169, § 12; Jan. 1, 2007.

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21-4619

Chapter 21.--CRIMES AND PUNISHMENTS PART III.--CLASSIFICATION OF CRIMES AND SENTENCING Article 46.--SENTENCING

21-4619. Expungement of certain convictions, arrest records and diversion agreements. (a) (1) Except as provided in subsections (b) and (c), any person convicted in this state of a traffic infraction, cigarette or tobacco infraction, misdemeanor or a class D or E felony, or for crimes committed on or after July 1, 1993, nondrug crimes ranked in severity levels 6 through 10 or any felony ranked in severity level 4 of the drug grid, may petition the convicting court for the expungement of such conviction or related arrest records if three or more years have elapsed since the person: (A) Satisfied the sentence imposed; or (B) was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence.

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

(b) Except as provided in subsection (c), no person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed, the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a class A, B or C felony, or for crimes committed on or after July 1, 1993, if convicted of an off-grid felony or any nondrug crime ranked in severity levels 1 through 5 or any felony ranked in severity levels 1 through 3 of the drug grid, or:

(1) Vehicular homicide, as defined by K.S.A. 21-3405, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

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

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

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

(5) any crime punishable as a felony wherein a motor vehicle was used in the

perpetration of such crime;

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

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

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

(c) There shall be no expungement of convictions for the following offenses or of convictions for an attempt to commit any of the following offenses: (1) Rape as defined in K.S.A. 21-3502, and amendments thereto; (2) indecent liberties with a child as defined in K.S.A. 21-3503, and amendments thereto; (3) aggravated indecent liberties with a child as defined in K.S.A. 21-3504, and amendments thereto; (4) criminal sodomy as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505, and amendments thereto; (5) aggravated criminal sodomy as defined in K.S.A. 21-3506, and amendments thereto; (6) indecent solicitation of a child as defined in K.S.A. 21-3510, and amendments thereto; (7) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511, and amendments thereto; (8) sexual exploitation of a child as defined in K.S.A. 21-3516, and amendments thereto; (9) aggravated incest as defined in K.S.A. 21-3603, and amendments thereto; (10) endangering a child as defined in K.S.A. 21-3608, and amendments thereto; (11) abuse of a child as defined in K.S.A. 21-3609, and amendments thereto; (12) capital murder as defined in K.S.A. 21-3439, and amendments thereto; (13) murder in the first degree as defined in K.S.A. 21-3401, and amendments thereto; (14) murder in the second degree as defined in K.S.A. 21-3402, and amendments thereto; (15) voluntary manslaughter as defined in K.S.A. 21-3403, and amendments thereto; (16) involuntary manslaughter as defined in K.S.A. 21-3404, and amendments thereto; (17) involuntary manslaughter while driving under the influence of alcohol or drugs as defined in K.S.A. 21-3442, and amendments thereto; (18) sexual battery as defined in K.S.A. 21-3517, and amendments thereto, when the victim was less than 18 years of age at the time the crime was committed; (19) aggravated sexual battery as defined in K.S.A. 21-3518, and amendments thereto; (20) a violation of K.S.A. 8-1567, and amendments thereto, including any diversion for such violation; (21) a violation of K.S.A. 8-2,144, and amendments thereto, including any diversion for such violation; or (22) any conviction for any offense in effect at any time prior to the effective date of this act, that is comparable to any offense as provided in this subsection.

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

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

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

(4) the crime for which the defendant was arrested, convicted or diverted;

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

(6) the identity of the convicting court, arresting law enforcement authority or diverting authority. There shall be no docket fee for filing a petition pursuant to this section. All petitions for expungement shall be docketed in the original criminal action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the Kansas parole board.

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

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

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

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

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

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

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

(A) In any application for licensure as a private detective, private detective agency, certification as a firearms trainer pursuant to K.S.A. 2007 Supp. 75-7b21, and amendments thereto, or employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services;

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

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

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

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

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

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

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

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

(J) in any application for employment as a law enforcement officer as defined in

K.S.A. 22-2202 or 74-5602, and amendments thereto;

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

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

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

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

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

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

(1) The person whose record was expunged;

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

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

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

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

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

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

(8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas

lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

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

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

(11) the Kansas sentencing commission;

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

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

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

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

(16) the attorney general and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act.

History: L. 1978, ch. 120, § 28; L. 1979, ch. 90, § 7; L. 1980, ch. 102, § 2; L. 1980, ch. 103, § 1; L. 1981, ch. 158, § 2; L. 1982, ch. 139, § 2; L. 1984, ch. 39, § 35; L. 1985, ch. 48, § 15; L. 1986, ch. 129, § 1; L. 1987, ch. 292, § 24; L. 1988, ch. 315, § 2; L. 1989, ch. 96, § 1; L. 1990, ch. 105, § 1; L. 1992, ch. 239, § 247; L. 1993, ch. 253, § 16; L. 1993, ch. 291, § 186; L. 1994, ch. 291, § 48; L. 1995, ch. 251, § 15; L. 1996, ch. 214, § 27; L. 1998, ch. 131, § 5; L. 2001, ch. 185, § 1; L. 2002, ch. 163, § 2; L. 2004, ch. 149, § 1; L. 2005, ch. 168, § 2; L. 2005, ch. 186, § 9; L. 2005, ch. 186, § 10; L. 2006, ch. 32, § 21; L. 2006, ch. 171, § 4; L. 2007, ch. 110, § 58; Apr. 19.

HOUSE BILL No. 2545

By Committee on Appropriations

2-20

9 AN ACT concerning controlled substances; relating to possession
10 thereof; amending K.S.A. 65-4162 and repealing the existing section.

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

13 Section 1. K.S.A. 65-4162 is hereby amended to read as follows: 65-
14 4162. (a) Except as authorized by the uniform controlled substances act,
15 it shall be unlawful for any person to possess or have under such person's
16 control:

17 (1) Any depressant designated in subsection (e) of K.S.A. 65-4105,
18 subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109
19 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

20 (2) any stimulant designated in subsection (f) of K.S.A. 65-4105, sub-
21 section (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A.
22 65-4109, and amendments thereto;

23 (3) any hallucinogenic drug designated in subsection ~~(d)~~ (d)(11)
24 through (d)(29) of K.S.A. 65-4105 and amendments thereto or designated
25 in subsection (g) of K.S.A. 65-4107 and amendments thereto or desig-
26 nated in subsection (g) of K.S.A. 65-4109 and amendments thereto;

27 (4) any substance designated in subsection (g) of K.S.A. 65-4105, and
28 amendments thereto, and designated in subsection (c), (d), (e), (f) or (g)
29 of K.S.A. 65-4111 and amendments thereto; ~~or~~

30 (5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-
31 4109, and amendments thereto; *or*

32 (6) *any hallucinogenic drug designated in subsection (d)(1) through*
33 *(d)(10) of K.S.A. 65-4105, and amendments thereto.*

34 (b) Except as otherwise provided, any person who violates this sub-
35 section (a)(1), (a)(2), (a)(3), (a)(4) or (a)(5) shall be guilty of a class A
36 nonperson misdemeanor. If any person has a prior conviction under this
37 section, a conviction for a substantially similar offense from another ju-
38 risdiction or a conviction of a violation of an ordinance of any city or
resolution of any county for a substantially similar offense ~~if the substance~~
~~involved was marijuana or tetrahydrocannabinol as designated in subsec-~~
~~tion (d) of K.S.A. 65-4105 and amendments thereto, then such person~~
shall be guilty of a drug severity level 4 felony.

41
42
43 (c) *Any person who violates subsection (a)(6) shall be guilty of a drug*

Remove all amendments

3,4-methylenedioxyamphetamine (MDMA),

House Judiciary
Date 2-11-08
Attachment # 4

1 *severity level 4 felony.*

2 ~~(b)~~ (d) It shall not be a defense to charges arising under this section
3 that the defendant was acting in an agency relationship on behalf of any
4 other party in a transaction involving a controlled substance.

5 ~~(e)~~ (e) For purposes of the uniform controlled substances act, the
6 prohibitions contained in this section shall apply to controlled substance
7 analogs as defined in subsection (bb) of K.S.A. 65-4101 and amendments
8 thereto.

9 ~~(f)~~ (f) The provisions of this section shall be part of and supplemental
10 to the uniform controlled substances act.

11 Sec. 2. K.S.A. 65-4162 is hereby repealed.

12 Sec. 3. This act shall take effect and be in force from and after its
13 publication in the statute book.

6-2