

HOUSE BILL No. 2655

By Committee on Corrections and Juvenile Justice

Requested by Representative Lewis

2-3

1 AN ACT concerning municipal courts; providing for expungement of
2 convictions and related arrest records when a person has completed the
3 requirements of a specialty court program; authorizing the chief judge
4 of each municipal court to establish a specialty court program in
5 accordance with supreme court rules; amending K.S.A. 12-4516 and
6 20-173 and repealing the existing sections.

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

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

15 (A) Satisfied the sentence imposed; or

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

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

23 (3) *Notwithstanding the provisions of subsection (a)(1), and except as*
24 *provided in subsections (b), (c), (d), (e) and (f), any person who has*
25 *completed the requirements of a specialty court program established*
26 *pursuant to K.S.A. 20-173, and amendments thereto, may petition the*
27 *municipal court for the expungement of the conviction and related arrest*
28 *records. The court may waive all or part of the docket fee imposed for*
29 *filing a petition pursuant to this subsection.*

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

1 (c) Any person convicted of the violation of a city ordinance which
2 would also constitute a violation of K.S.A. 21-3512, prior to its repeal, or a
3 violation of K.S.A. 21-6419, and amendments thereto, or who entered into
4 a diversion agreement in lieu of further criminal proceedings for such
5 violation, may petition the convicting court for the expungement of such
6 conviction or diversion agreement and related arrest records if:

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

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

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

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

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

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

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

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

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

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

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

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

1 (2) No person may petition for expungement until 10 or more years
2 have elapsed since the person satisfied the sentence imposed or was
3 discharged from probation, parole, conditional release or a suspended
4 sentence, if such person was convicted of a second or subsequent violation
5 of a city ordinance which would also constitute a second or subsequent
6 violation of K.S.A. 8-1567, and amendments thereto.

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

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

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

16 (A) Defendant's full name;

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

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

20 (D) crime for which the defendant was arrested, convicted or
21 diverted;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (1) The person whose record was expunged;

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (A) To be an employee of the state gaming agency; or
2 (B) to be an employee of a tribal gaming commission or to hold a
3 license issued pursuant to a tribal-state gaming compact;
4 (12) the Kansas securities commissioner, or a designee of the
5 commissioner, and the request is accompanied by a statement that the
6 request is being made in conjunction with an application for registration as
7 a broker-dealer, agent, investment adviser or investment adviser
8 representative by such agency and the application was submitted by the
9 person whose record has been expunged;
10 (13) the attorney general, and the request is accompanied by a
11 statement that the request is being made to aid in determining
12 qualifications for a license to:
13 (A) Carry a concealed weapon pursuant to the personal and family
14 protection act; or
15 (B) act as a bail enforcement agent pursuant to K.S.A. 75-7e01
16 through 75-7e09 and K.S.A. 50-6,141, 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. 20-173 is hereby amended to read as follows: 20-173.
27 (a) The supreme court shall adopt rules for the establishment and operation
28 of one or more specialty court programs within the state. The chief judge
29 of a judicial district *or the chief judge of a municipal court* may establish a
30 specialty court program in accordance with the rules adopted by the
31 supreme court.
32 (b) (1) There is hereby established a specialty court funding advisory
33 committee within the judicial branch. The committee shall:
34 (A) Evaluate resources available for assessment and treatment of
35 people assigned to specialty courts or for the operation of specialty courts;
36 (B) secure grants, funds and other property and services necessary or
37 advantageous to facilitate the operation of specialty courts;
38 (C) recommend to the judicial administrator the allocation of
39 resources among the various specialty courts operating within the state;
40 and
41 (D) recommend legislation and rules to aid the development of
42 specialty courts.
43 (2) The committee shall consist of the following members:

1 (A) The chairperson of the standing committee on judiciary in the
2 house of representatives, or the chairperson's designee;

3 (B) the chairperson of the standing committee on judiciary in the
4 senate, or the chairperson's designee;

5 (C) the chairperson of the legislative budget committee created
6 pursuant to K.S.A. 46-1208, and amendments thereto, or the chairperson's
7 designee;

8 (D) one member of the legislature from the minority party appointed
9 jointly by the minority leader in the house of representatives and the
10 minority leader in the senate;

11 (E) five members appointed by the chief justice of the supreme court,
12 including one representative of the prosecutors throughout the state and
13 one representative of the criminal defense attorneys throughout the state;

14 (F) one member appointed by the secretary of corrections who shall
15 serve as an ex officio, nonvoting member;

16 (G) one member appointed by the secretary for aging and disability
17 services who shall serve as an ex officio, nonvoting member; and

18 (H) a drug and alcohol addiction treatment provider appointed by the
19 Kansas sentencing commission who shall serve as an ex officio, nonvoting
20 member.

21 (3) Three members appointed by the chief justice shall be appointed
22 for a term of three years. Two members appointed by the chief justice shall
23 be appointed for a term of two years. The ex officio, nonvoting members
24 shall be appointed for a term of two years. Members shall serve until a
25 qualified successor is appointed. Vacancies shall be filled in the same
26 manner as provided in this subsection. Members of the committee shall be
27 appointed prior to August 1, 2022.

28 (4) The chief justice of the supreme court shall designate the
29 chairperson of the committee.

30 (5) The office of judicial administration may provide technical
31 assistance to the committee.

32 (6) All members of the committee who are not judicial members shall
33 receive compensation, travel expenses and subsistence expenses or
34 allowances as provided in K.S.A. 75-3212, and amendments thereto.
35 Judicial members shall receive reimbursement for travel expenses and
36 subsistence expenses or allowances as provided in K.S.A. 75-3212, and
37 amendments thereto.

38 (7) Nothing in this section shall prohibit any judicial district, local
39 government or the judicial branch from directly applying for, receiving and
40 retaining funding to facilitate the operation of specialty courts. Funds
41 received by a judicial district or local government shall not be remitted to
42 the state treasurer in accordance with this section.

43 (c) (1) There is hereby established the specialty court resources fund

1 in the state treasury which shall be administered by the judicial
2 administrator. All expenditures from the specialty court resources fund
3 shall be for the purpose of operating specialty court programs established
4 pursuant to this section, including administrative costs related to such
5 programs. All expenditures from the fund shall be made in accordance
6 with appropriation acts upon warrants of the director of accounts and
7 reports issued pursuant to vouchers approved by the judicial administrator
8 or the judicial administrator's designee.

9 (2) Funds acquired through appropriations, grants, gifts, contributions
10 and other public or private sources that are designated for specialty court
11 operations shall be remitted to the state treasurer in accordance with the
12 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
13 each such remittance, the state treasurer shall deposit the entire amount
14 into the state treasury to the credit of the specialty court resources fund.

15 (d) (1) If a person is sentenced to participate in a specialty ~~court~~
16 ~~court~~ program pursuant to K.S.A. 21-6604, and amendments thereto, and
17 the person successfully completes such program, the person's sentence
18 may be reduced or modified.

19 (2) Nothing in this subsection shall be construed to authorize a judge
20 to impose, modify or reduce a sentence below the minimum sentence
21 required by law.

22 (e) For the purposes of this section, "specialty court" means a district
23 court or *municipal court* program that uses therapeutic or problem-solving
24 procedures to address underlying factors that may be contributing to a
25 person's involvement in the judicial system, including, but not limited to,
26 mental illness or drug, alcohol or other addictions. Procedures may include
27 treatment, mandatory periodic testing for prohibited drugs or other
28 substances, community supervision and appropriate sanctions and
29 incentives.

30 Sec. 3. K.S.A. 12-4516 and 20-173 are hereby repealed.

31 Sec. 4. This act shall take effect and be in force from and after its
32 publication in the Kansas register.