

SENATE BILL No. 187

By Committee on Judiciary

2-4

1 AN ACT concerning children and minors; relating to juvenile offenders;
2 requiring certain records or files to be automatically expunged from a
3 juvenile's record; amending K.S.A. 38-2312 and repealing the existing
4 section.

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

7 Section 1. K.S.A. 38-2312 is hereby amended to read as follows: 38-
8 2312. (a) Except as provided in subsections (b) and (c);:

9 *(1) On and after July 1, 2025, upon final discharge for an*
10 *adjudication concerning an act committed by a juvenile which, if*
11 *committed by an adult, would constitute any offense other than an offense*
12 *described in subsection (b), the court shall order the expungement of all*
13 *records or files related to such adjudication. An order expunging records*
14 *or files pursuant to this paragraph shall not require any action by the*
15 *juvenile. No docket fee shall be charged.*

16 *(2) Any records or files specified in this code concerning a juvenile*
17 *that have not been expunged pursuant to paragraph (1) may be expunged*
18 *upon application to a judge of the court of the county in which where the*
19 *records or files are maintained. The application for expungement may be*
20 *made by the juvenile, if 18 years of age or older or, if the juvenile is less*
21 *than 18 years of age, by the juvenile's parent or next friend.*

22 *(b) There shall be no expungement of records or files concerning acts*
23 *committed by a juvenile which, if committed by an adult, would constitute*
24 *a violation of K.S.A. 21-3401, prior to its repeal, or K.S.A. 21-5402, and*
25 *amendments thereto, murder in the first degree; K.S.A. 21-3402, prior to*
26 *its repeal, or K.S.A. 21-5403, and amendments thereto, murder in the*
27 *second degree; K.S.A. 21-3403, prior to its repeal, or K.S.A. 21-5404, and*
28 *amendments thereto, voluntary manslaughter; K.S.A. 21-3404, prior to its*
29 *repeal, or K.S.A. 21-5405, and amendments thereto, involuntary*
30 *manslaughter; K.S.A. 21-3439, prior to its repeal, or K.S.A. 21-5401, and*
31 *amendments thereto, capital murder; K.S.A. 21-3442, prior to its repeal, or*
32 *K.S.A. 21-5405(a)(3) or (a)(5), and amendments thereto, involuntary*
33 *manslaughter while driving under the influence of alcohol or drugs; K.S.A.*
34 *21-3502, prior to its repeal, or K.S.A. 21-5503, and amendments thereto,*
35 *rape; K.S.A. 21-3503, prior to its repeal, or K.S.A. 21-5506(a), and*
36 *amendments thereto, indecent liberties with a child; K.S.A. 21-3504, prior*

1 to its repeal, or K.S.A. 21-5506(b), and amendments thereto, aggravated
2 indecent liberties with a child; K.S.A. 21-3506, prior to its repeal, or
3 K.S.A. 21-5504(b), and amendments thereto, aggravated criminal sodomy;
4 K.S.A. 21-3510, prior to its repeal, or K.S.A. 21-5508(a), and amendments
5 thereto, indecent solicitation of a child; K.S.A. 21-3511, prior to its repeal,
6 or K.S.A. 21-5508(b), and amendments thereto, aggravated indecent
7 solicitation of a child; K.S.A. 21-3516, prior to its repeal, or K.S.A. 21-
8 5510, and amendments thereto, sexual exploitation of a child; K.S.A. 21-
9 5514(a), and amendments thereto, internet trading in child pornography;
10 K.S.A. 21-5514(b), and amendments thereto, aggravated internet trading in
11 child pornography; K.S.A. 21-3603, prior to its repeal, or K.S.A. 21-
12 5604(b), and amendments thereto, aggravated incest; K.S.A. 21-3608,
13 prior to its repeal, or K.S.A. 21-5601(a), and amendments thereto,
14 endangering a child; K.S.A. 21-3609, prior to its repeal, or K.S.A. 21-
15 5602, and amendments thereto, abuse of a child; or which would constitute
16 an attempt to commit a violation of any of the offenses specified in this
17 subsection.

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

24 (d) (1) When a petition for expungement is filed *pursuant to*
25 *subsection (a)(2)*, the court shall set a date for a hearing on the petition and
26 shall give notice thereof to the county or district attorney. The petition
27 shall state:

- 28 ~~(1)~~(A) The juvenile's full name;
29 ~~(2)~~(B) the full name of the juvenile as reflected in the court record, if
30 different than ~~(1)~~ *subparagraph (A)*;
31 ~~(3)~~(C) the juvenile's sex and date of birth;
32 ~~(4)~~(D) the offense for which the juvenile was adjudicated;
33 ~~(5)~~(E) the date of the trial; and
34 ~~(6)~~(F) the identity of the trial court.

35 (2) Except as otherwise provided by law, a petition for expungement
36 shall be accompanied by a docket fee in the amount of \$176. On and after
37 July 1, 2019, through June 30, 2025, the supreme court may impose a
38 charge, not to exceed \$19 per case, to fund the costs of non-judicial
39 personnel. All petitions for expungement shall be docketed in the original
40 action. Any person who may have relevant information about the petitioner
41 may testify at the hearing. The court may inquire into the background of
42 the petitioner.

43 (e) (1) After *the hearing on a petition for expungement pursuant to*

1 *subsection (a)(2)*, the court shall order the expungement of the records and
2 files if the court finds that:

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

5 (ii) one year has elapsed since the final discharge for an adjudication
6 concerning acts committed by a juvenile which, if committed by an adult,
7 would constitute a violation of K.S.A. 21-6419, and amendments thereto;
8 or

9 (iii) the juvenile is a victim of human trafficking, aggravated human
10 trafficking or commercial sexual exploitation of a child, the adjudication
11 concerned acts committed by the juvenile as a result of such victimization,
12 including, but not limited to, acts which, if committed by an adult, would
13 constitute a violation of K.S.A. 21-6203 or 21-6419, and amendments
14 thereto, and the hearing on expungement occurred on or after the date of
15 final discharge. The provisions of this clause shall not allow an
16 expungement of records or files concerning acts described in subsection
17 (b);

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

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

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

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

38 (g) A certified copy of any order made pursuant to subsection (a) or
39 (d) shall be sent to the Kansas bureau of investigation, which shall notify
40 every juvenile or criminal justice agency which may possess records or
41 files ordered to be expunged. If the agency fails to comply with the order
42 within a reasonable time after its receipt, such agency may be adjudged in
43 contempt of court and punished accordingly.

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

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

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

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

14 (1) The person whose record was expunged;

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

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

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

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

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

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

40 (8) the Kansas sentencing commission; or

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

42 (A) Completing a person's criminal history record information within
43 the central repository in accordance with K.S.A. 22-4701 et seq., and

1 amendments thereto; or

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

5 (l) The provisions of subsection (k)(9) shall apply to all records
6 created prior to, on and after July 1, 2011.

7 Sec. 2. K.S.A. 38-2312 is hereby repealed.

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