

HOUSE BILL No. 2159

By Committee on Judiciary

1-28

Proposed Amendments to HB2159
Prepared by: Jason Thompson
Office of Revisor of Statutes
February 23, 2015

1 AN ACT concerning driving; relating to convictions and diversions;
2 habitual-violator status; expungement of driving under the influence
3 and other driving offenses; amending K.S.A. 2014 Supp. 8-285, 12-
4 4516 and 21-6614 and repealing the existing sections; also repealing
5 K.S.A. 2014 Supp. 12-4516b and 21-6614e.
6

Strike in line 2 and 3

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

8 Section 1. ~~K.S.A. 2014 Supp. 8-285 is hereby amended to read as~~
9 ~~follows: 8-285. Except as otherwise provided in this section, as used in~~
10 ~~this act, the words and phrases defined in K.S.A. 8-234a, and amendments~~
11 ~~thereof, shall have the meanings ascribed to them therein. The term~~
12 ~~"habitual violator" means any resident or nonresident person who, within~~
13 ~~the immediately preceding five years, has been convicted in this or any~~
14 ~~other state;~~

Remove Section 1,
leave KSA 8-285
as current law

15 (a) Three or more times of:

16 (1) ~~Vehicle homicide, as defined by K.S.A. 21-3405, prior to its~~
17 ~~repeal, or K.S.A. 2014 Supp. 21-5406, and amendments thereto, or as~~
18 ~~prohibited by any ordinance of any city in this state, any resolution of any~~
19 ~~county in this state or any law of another state which is in substantial~~
20 ~~conformity with that statute;~~

21 (2) ~~violating K.S.A. 8-1567, and amendments thereto, or violating an~~
22 ~~ordinance of any city in this state, any resolution of any county in this state~~
23 ~~or any law of another state, which ordinance, resolution or law declares to~~
24 ~~be unlawful the acts prohibited by that statute;~~

25 (3) ~~driving while the privilege to operate a motor vehicle on the~~
26 ~~public highways of this state has been canceled, suspended or revoked, as~~
27 ~~prohibited by K.S.A. 8-262, and amendments thereto, or while such~~
28 ~~person's privilege to obtain a driver's license is suspended or revoked~~
29 ~~pursuant to K.S.A. 8-252a, and amendments thereto, or, as prohibited by~~
30 ~~any ordinance of any city in this state, any resolution of any county in this~~
31 ~~state or any law of another state which is in substantial conformity with~~
32 ~~those statutes;~~

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

36 (5) ~~violating the provisions of the fifth clause of K.S.A. 8-142, and~~

1 amendments thereto relating to fraudulent applications, or violating the
2 provisions of a law of another state which is in substantial conformity with
3 that statute;

4 (6) any crime punishable as a felony, if a motor vehicle was used in
5 the perpetration of the crime;

6 (7) failing to stop at the scene of an accident and perform the duties
7 required by K.S.A. 8-1602 through 8-1604, and amendments thereto, or
8 required by any ordinance of any city in this state, any resolution of any
9 county in this state or a law of another state which is in substantial
10 conformity with those statutes;

11 (8) violating the provisions of K.S.A. 40-3104, and amendments
12 thereto, relating to motor vehicle liability insurance coverage, or an
13 ordinance of any city in this state or a resolution of any county in this state
14 which is in substantial conformity with such statute; or

15 (9) violating K.S.A. 20-14 Supp. 8-1025, and amendments thereto, or
16 violating an ordinance of any city in this state, a resolution of any county
17 in this state or any law of another state which ordinance, resolution or law
18 declares to be unlawful the acts prohibited by that statute.

19 (b) Three or more times, either singly or in combination, of any of the
20 offenses enumerated in subsection (a);

21 For the purpose of subsections (a)(2) and (a)(9), in addition to the
22 definition of "conviction" otherwise provided by law, conviction includes,
23 but is not limited to, a diversion agreement entered into in lieu of further
24 eminent proceedings, or a plea of nolo contendere, on a complaint,
25 indictment, information, citation or notice to appear alleging a violation of
26 K.S.A. 8-1567 or K.S.A. 20-14 Supp. 8-1025, and amendments thereto, or
27 an ordinance of a city in this state, a resolution of a county in this state or
28 law of another state, which ordinance or law prohibits the acts prohibited
29 by these statutes.

30 (c) ~~An expungement of a conviction that was relied upon by the~~
31 ~~division to initiate habitual violator revocation pursuant to K.S.A. 8-286,~~
32 ~~and amendments thereto, shall not serve as a basis for resending an~~
33 ~~already imposed habitual violator revocation and shall not serve as a~~
34 ~~defense to pending charges alleging a violation of K.S.A. 8-287, and~~
35 ~~amendments thereto, or a violation of a city ordinance or county~~
36 ~~resolution prohibiting the acts prohibited by K.S.A. 8-287, and~~
37 ~~amendments thereto.~~

38 Sec. 2. K.S.A. 2014 Supp. 12-4516 is hereby amended to read as
39 follows: 12-4516. (a) (1) Except as provided in subsections (b), (c), (d), (e)
40 and (f), any person who has been convicted of a violation of a city
41 ordinance of this state may petition the convicting court for the
42 expungement of such conviction and related arrest records if three or more
43 years have elapsed since the person:

Remove Section 1,
leave KSA 8-285
as current law

1 (A) Satisfied the sentence imposed; or
2 (B) was discharged from probation, parole or a suspended sentence.

Insert ", (e)"

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

9 (b) Any person convicted of a violation of any ordinance that is
10 prohibited by either ~~subsection (a) or (b)~~ of K.S.A. 2014 Supp. 12-
11 16,134(a) or (b), and amendments thereto, and which was adopted prior to
12 July 1, 2014, or who entered into a diversion agreement in lieu of further
13 criminal proceedings for such violation, may petition the convicting court
14 for the expungement of such conviction or diversion agreement and related
15 arrest records.

16 (c) Any person convicted of the violation of a city ordinance which
17 would also constitute a violation of K.S.A. 21-3512, prior to its repeal, or a
18 violation of K.S.A. 2014 Supp. 21-6419, and amendments thereto, or who
19 entered into a diversion agreement in lieu of further criminal proceedings
20 for such violation, may petition the convicting court for the expungement
21 of such conviction or diversion agreement and related arrest records it.

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

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

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

36 (1) Vehicular homicide, as defined by K.S.A. 21-3405, prior to its
37 repeal, or K.S.A. 2014 Supp. 21-5406, and amendments thereto;

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

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

43 (4) a violation of the provisions of the fifth clause of K.S.A. 8-142,

1 and amendments thereto, relating to fraudulent applications;
2 (5) any crime punishable as a felony wherein a motor vehicle was
3 used in the perpetration of such crime;

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

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

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

10 (e) No person may petition for expungement until ~~10 seven~~ or more
11 years have elapsed since the person satisfied the sentence imposed ~~or the~~
12 ~~terms of a diversion agreement~~ or was discharged from probation, parole,
13 conditional release or a suspended sentence, if such person was convicted
14 of the violation of a city ordinance which would also constitute a ~~felony~~
15 violation of K.S.A. 8-1567 or K.S.A. 2014 Supp. 8-1025, and amendments
16 thereto.

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

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

24 (A) Defendant's full name;

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

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

28 (D) crime for which the defendant was arrested, convicted or
29 diverted;

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

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

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

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

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

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

strike "seven", insert "five"

Insert "or the terms of a diversion agreement"

strike "felony" in line 14

1 issued pursuant to a tribal-state gaming compact;

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

8 (13) the attorney general, and the request is accompanied by a
9 statement that the request is being made to aid in determining
10 qualifications for a license to carry a concealed weapon pursuant to the
11 personal and family protection act;

12 (14) the Kansas sentencing commission;

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

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

21 Sec. 3. K.S.A. 2014 Supp. 21-6614 is hereby amended to read as
22 follows: 21-6614. (a) (1) Except as provided in subsections (b), (c), (d),
23 (e) and (f), any person convicted in this state of a traffic infraction,
24 cigarette or tobacco infraction, misdemeanor or a class D or E felony, or
25 for crimes committed on or after July 1, 1993, ~~nondrug-crimes any~~
26 *nongrid felony or felony* ranked in severity levels 6 through 10 of the
27 *nondrug grid*, or for crimes committed on or after July 1, 1993, but prior to
28 July 1, 2012, any felony ranked in severity level 4 of the drug grid, or for
29 crimes committed on or after July 1, 2012, any felony ranked in severity
30 level 5 of the drug grid may petition the convicting court for the
31 expungement of such conviction or related arrest records if three or more
32 years have elapsed since the person: (A) Satisfied the sentence imposed; or
33 (B) was discharged from probation, a community correctional services
34 program, parole, postrelease supervision, conditional release or a
35 suspended sentence.

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

41 (b) Any person convicted of prostitution, as defined in K.S.A. 21-
42 3512, prior to its repeal, convicted of a violation of K.S.A. 2014 Supp. 21-
43 6419, and amendments thereto, or who entered into a diversion agreement

Insert "(d),"

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

4 (1) One or more years have elapsed since the person satisfied the
5 sentence imposed or the terms of a diversion agreement or was discharged
6 from probation, a community correctional services program, parole,
7 postrelease supervision, conditional release or a suspended sentence; and
8 (2) such person can prove they were acting under coercion caused by
9 the act of another. For purposes of this subsection, "coercion" means:
10 Threats of harm or physical restraint against any person; a scheme, plan or
11 pattern intended to cause a person to believe that failure to perform an act
12 would result in bodily harm or physical restraint against any person; or the
13 abuse or threatened abuse of the legal process.

14 (c) Except as provided in subsections (e) and (f), no person may
15 petition for expungement until five or more years have elapsed since the
16 person satisfied the sentence imposed or the terms of a diversion
17 agreement or was discharged from probation, a community correctional
18 services program, parole, postrelease supervision, conditional release or a
19 suspended sentence, if such person was convicted of a class A, B or C
20 felony, or for crimes committed on or after July 1, 1993, if convicted of an
21 off-grid felony or any ~~non-duty~~ *on-duty* ~~felony~~ ranked in severity levels 1
22 through 5 of the *non-duty grid*, or for crimes committed on or after July 1,
23 1993, but prior to July 1, 2012, any felony ranked in severity levels 1
24 through 3 of the drug grid, or for crimes committed on or after July 1,
25 2012, any felony ranked in severity levels 1 through 4 of the drug grid, or:
26 (1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its
27 repeal, or K.S.A. 2014 Supp. 21-5406, and amendments thereto, or as
28 prohibited by any law of another state which is in substantial conformity
29 with that statute;

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

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

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

42 (5) any crime punishable as a felony wherein a motor vehicle was
43 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, prior to its repeal, 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.

(d) No person may petition for expungement until ~~seven~~ or more years have elapsed since the person satisfied the sentence imposed ~~or 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 ~~felony~~ violation of K.S.A. 8-1567 or K.S.A. 2014 Supp. 8-1025, and amendments thereto, ~~including any diversion for such violation~~.

(e) 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, prior to its repeal, or K.S.A. 2014 Supp. 21-5503, and amendments thereto;

(2) indecent liberties with a child or aggravated indecent liberties with a child, as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal, or K.S.A. 2014 Supp. 21-5506, and amendments thereto;

(3) criminal sodomy, as defined in ~~subsection (a)(2) or (a)(3) of~~ K.S.A. 21-3505(a)(2) or (a)(3), prior to its repeal, or ~~subsection (a)(3) or (a)(4) of~~ K.S.A. 2014 Supp. 21-5504(a)(3) or (a)(4), and amendments thereto;

(4) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior to its repeal, or K.S.A. 2014 Supp. 21-5504, and amendments thereto;

(5) indecent solicitation of a child or aggravated indecent solicitation of a child, as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal, or K.S.A. 2014 Supp. 21-5508, and amendments thereto;

(6) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2014 Supp. 21-5510, and amendments thereto;

(7) aggravated incest, as defined in K.S.A. 21-3603, prior to its repeal, or K.S.A. 2014 Supp. 21-5604, and amendments thereto;

(8) endangering a child or aggravated endangering a child, as defined in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2014 Supp. 21-5601, and amendments thereto;

(9) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal, or K.S.A. 2014 Supp. 21-5602, and amendments thereto;

(10) capital murder, as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 2014 Supp. 21-5401, and amendments thereto;

(11) murder in the first degree, as defined in K.S.A. 21-3401, prior to

Strike "seven", insert "five"

Insert "or the terms of a diversion agreement"

Strike "felony" in line 13

Insert ", including any diversion for such violation"

1 investigation, in connection with the national instant criminal background
2 check system, to determine a person's qualification to possess a firearm.

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

5 Sec. 4. K.S.A. 2014 Supp. 8-285, 12-4516, 12-4516b, 21-6614 and
6 21-6614e are hereby repealed.

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

Strike "8-285,"