

Substitute for HOUSE BILL No. 2159

By Committee on Judiciary

2-24

HB2159-Balloon-King
Prepared by: Jason Thompson
Office of Revisor of Statutes
March 19, 2015

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

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

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

14 (A) Satisfied the sentence imposed; or

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

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

22 (b) Any person convicted of a violation of any ordinance that is
23 prohibited by either ~~subsection (a) or (b)~~ of K.S.A. 2014 Supp. 12-
24 16,134(a) or (b), and amendments thereto, and which was adopted prior to
25 July 1, 2014, or who entered into a diversion agreement in lieu of further
26 criminal proceedings for such violation, may petition the convicting court
27 for the expungement of such conviction or diversion agreement and related
28 arrest records.

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

35 (1) One or more years have elapsed since the person satisfied the
36 sentence imposed or the terms of a diversion agreement or was discharged

1 from probation, parole, conditional release or a suspended sentence; and
2 (2) such person can prove they were acting under coercion caused by
3 the act of another. For purposes of this subsection, "coercion" means:
4 Threats of harm or physical restraint against any person; a scheme, plan or
5 pattern intended to cause a person to believe that failure to perform an act
6 would result in bodily harm or physical restraint against any person; or the
7 abuse or threatened abuse of the legal process.

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

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

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

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

20 (4) a violation of the provisions of ~~the fifth clause~~ of K.S.A. 8-
21 142fiffh, and amendments thereto, relating to fraudulent applications;

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

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

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

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

30 (e) No person may petition for expungement until ~~10~~ five or more
31 years have elapsed since the person satisfied the sentence imposed or the
32 terms of a diversion agreement or was discharged from probation, parole,
33 conditional release or a suspended sentence, if such person was convicted
34 of ~~the violation of a city ordinance which would also constitute a violation~~

35 of K.S.A. 8-1567 or K.S.A. 2014 Supp. 8-1025, and amendments thereto.

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

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

43 (A) Defendant's full name;

(1)

a first

first

(2) No person may petition for expungement until 10 or more years have elapsed since the person satisfied the sentence imposed or was discharged from probation, parole, conditional release or a suspended sentence, if such person was convicted of a second or subsequent violation of a city ordinance which would also constitute a second or subsequent violation of K.S.A. 8-1567 or K.S.A. 2014 Supp. 8-1025, and amendments thereto.

2012, any felony ranked in severity levels 1 through 4 of the drug grid, or:

(1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its repeal, or K.S.A. 2014 Supp. 21-5406, 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 *f/h*, 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, 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~~ five 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 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) of~~

(1)

first

(2) No person may petition for expungement until 10 or more years have elapsed since the person satisfied the sentence imposed 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 second or subsequent violation of K.S.A. 8-1567 or K.S.A. 2014 Supp. 8-1025, and amendments thereto.