

Substitute for HOUSE BILL No. 2159

By Committee on Judiciary

2-24

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (A) In any application for *licensure as a private detective, private*
39 *detective agency, certification as a firearms trainer pursuant to K.S.A.*
40 *2014 Supp. 75-7b21, and amendments thereto, or employment as a*
41 *detective with a private detective agency, as defined by K.S.A. 75-7b01,*
42 *and amendments thereto; as security personnel with a private patrol*
43 *operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with*

1 an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of
2 the department for ~~children and families~~ *aging and disability services*;

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

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

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

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

20 (F) upon application for a commercial driver's license under K.S.A.
21 8-2,125 through 8-2,142, and amendments thereto;

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

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

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

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

32 (K) for applications received on and after July 1, 2006, to aid in
33 determining the petitioner's qualifications for a license to carry a concealed
34 weapon pursuant to the personal and family protection act, K.S.A. 2014
35 Supp. 75-7c01 et seq., and amendments thereto;

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

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

42 (j) Whenever a person is convicted of an ordinance violation, pleads
43 guilty and pays a fine for such a violation, is placed on parole or probation

1 or is granted a suspended sentence for such a violation, the person shall be
2 informed of the ability to expunge the arrest records or conviction.
3 Whenever a person enters into a diversion agreement, the person shall be
4 informed of the ability to expunge the diversion.

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

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

15 (1) The person whose record was expunged;

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

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

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

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

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

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

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

1 Kansas lottery;

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

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

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

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

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

31 (14) the Kansas sentencing commission;

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

36 (16) a law enforcement agency and the request is accompanied by a
37 statement that the request is being made to aid in determining eligibility
38 for employment as a law enforcement officer as defined by K.S.A. 22-
39 2202, and amendments thereto.

40 Sec. 2. K.S.A. 2014 Supp. 21-6614 is hereby amended to read as
41 follows: 21-6614. (a) (1) Except as provided in subsections (b), (c), (d),
42 (e) and (f), any person convicted in this state of a traffic infraction,
43 cigarette or tobacco infraction, misdemeanor or a class D or E felony, or

1 for crimes committed on or after July 1, 1993, ~~nondrug crimes any~~
2 *nongrid felony or felony* ranked in severity levels 6 through 10 *of the*
3 *nondrug grid*, or for crimes committed on or after July 1, 1993, but prior to
4 July 1, 2012, any felony ranked in severity level 4 of the drug grid, or for
5 crimes committed on or after July 1, 2012, any felony ranked in severity
6 level 5 of the drug grid may petition the convicting court for the
7 expungement of such conviction or related arrest records if three or more
8 years have elapsed since the person: (A) Satisfied the sentence imposed; or
9 (B) was discharged from probation, a community correctional services
10 program, parole, postrelease supervision, conditional release or a
11 suspended sentence.

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

17 (b) Any person convicted of prostitution, as defined in K.S.A. 21-
18 3512, prior to its repeal, convicted of a violation of K.S.A. 2014 Supp. 21-
19 6419, and amendments thereto, or who entered into a diversion agreement
20 in lieu of further criminal proceedings for such violation, may petition the
21 convicting court for the expungement of such conviction or diversion
22 agreement and related arrest records if:

23 (1) One or more years have elapsed since the person satisfied the
24 sentence imposed or the terms of a diversion agreement or was discharged
25 from probation, a community correctional services program, parole,
26 postrelease supervision, conditional release or a suspended sentence; and

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

33 (c) Except as provided in subsections (e) and (f), no person may
34 petition for expungement until five or more years have elapsed since the
35 person satisfied the sentence imposed or the terms of a diversion
36 agreement or was discharged from probation, a community correctional
37 services program, parole, postrelease supervision, conditional release or a
38 suspended sentence, if such person was convicted of a class A, B or C
39 felony, or for crimes committed on or after July 1, 1993, if convicted of an
40 off-grid felony or any ~~nondrug crime~~ *felony* ranked in severity levels 1
41 through 5 *of the nondrug grid*, or for crimes committed on or after July 1,
42 1993, but prior to July 1, 2012, any felony ranked in severity levels 1
43 through 3 of the drug grid, or for crimes committed on or after July 1,

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

2 (1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its
3 repeal, or K.S.A. 2014 Supp. 21-5406, and amendments thereto, or as
4 prohibited by any law of another state which is in substantial conformity
5 with that statute;

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

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

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

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

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

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

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

27 (d) No person may petition for expungement until ~~seven~~ *five* or more
28 years have elapsed since the person satisfied the sentence imposed or the
29 terms of a diversion agreement or was discharged from probation, a
30 community correctional services program, parole, postrelease supervision,
31 conditional release or a suspended sentence, if such person was convicted
32 of a violation of K.S.A. 8-1567 or K.S.A. 2014 Supp. 8-1025, and
33 amendments thereto, including any diversion for such violation.

34 (e) There shall be no expungement of convictions for the following
35 offenses or of convictions for an attempt to commit any of the following
36 offenses:

37 (1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.
38 2014 Supp. 21-5503, and amendments thereto;

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

42 (3) criminal sodomy, as defined in ~~subsection (a)(2) or (a)(3) of~~
43 K.S.A. 21-3505(a)(2) or (a)(3), prior to its repeal, or ~~subsection (a)(3) or~~

- 1 ~~(a)(4)~~ of K.S.A. 2014 Supp. 21-5504(a)(3) or (a)(4), and amendments
2 thereto;
- 3 (4) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior
4 to its repeal, or K.S.A. 2014 Supp. 21-5504, and amendments thereto;
- 5 (5) indecent solicitation of a child or aggravated indecent solicitation
6 of a child, as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal,
7 or K.S.A. 2014 Supp. 21-5508, and amendments thereto;
- 8 (6) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior
9 to its repeal, or K.S.A. 2014 Supp. 21-5510, and amendments thereto;
- 10 (7) aggravated incest, as defined in K.S.A. 21-3603, prior to its
11 repeal, or K.S.A. 2014 Supp. 21-5604, and amendments thereto;
- 12 (8) endangering a child or aggravated endangering a child, as defined
13 in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2014 Supp.
14 21-5601, and amendments thereto;
- 15 (9) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal,
16 or K.S.A. 2014 Supp. 21-5602, and amendments thereto;
- 17 (10) capital murder, as defined in K.S.A. 21-3439, prior to its repeal,
18 or K.S.A. 2014 Supp. 21-5401, and amendments thereto;
- 19 (11) murder in the first degree, as defined in K.S.A. 21-3401, prior to
20 its repeal, or K.S.A. 2014 Supp. 21-5402, and amendments thereto;
- 21 (12) murder in the second degree, as defined in K.S.A. 21-3402, prior
22 to its repeal, or K.S.A. 2014 Supp. 21-5403, and amendments thereto;
- 23 (13) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to
24 its repeal, or K.S.A. 2014 Supp. 21-5404, and amendments thereto;
- 25 (14) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to
26 its repeal, or K.S.A. 2014 Supp. 21-5405, and amendments thereto;
- 27 (15) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal,
28 or K.S.A. 2014 Supp. 21-5505, and amendments thereto, when the victim
29 was less than 18 years of age at the time the crime was committed;
- 30 (16) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to
31 its repeal, or K.S.A. 2014 Supp. 21-5505, and amendments thereto;
- 32 (17) a violation of K.S.A. 8-2,144, and amendments thereto,
33 including any diversion for such violation; or
- 34 (18) any conviction for any offense in effect at any time prior to July
35 1, 2011, that is comparable to any offense as provided in this subsection.
- 36 (f) Notwithstanding any other law to the contrary, for any offender
37 who is required to register as provided in the Kansas offender registration
38 act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no
39 expungement of any conviction or any part of the offender's criminal
40 record while the offender is required to register as provided in the Kansas
41 offender registration act.
- 42 (g) (1) When a petition for expungement is filed, the court shall set a
43 date for a hearing of such petition and shall cause notice of such hearing to

1 be given to the prosecutor and the arresting law enforcement agency. The
2 petition shall state the:

- 3 (A) Defendant's full name;
- 4 (B) full name of the defendant at the time of arrest, conviction or
5 diversion, if different than the defendant's current name;
- 6 (C) defendant's sex, race and date of birth;
- 7 (D) crime for which the defendant was arrested, convicted or
8 diverted;
- 9 (E) date of the defendant's arrest, conviction or diversion; and
- 10 (F) identity of the convicting court, arresting law enforcement
11 authority or diverting authority.

12 (2) Except as otherwise provided by law, a petition for expungement
13 shall be accompanied by a docket fee in the amount of ~~\$100~~ \$176. On and
14 after July 1, 2013, through July 1, 2015, the supreme court may impose a
15 charge, not to exceed \$19 per case, to fund the costs of non-judicial
16 personnel. The charge established in this section shall be the only fee
17 collected or moneys in the nature of a fee collected for the case. Such
18 charge shall only be established by an act of the legislature and no other
19 authority is established by law or otherwise to collect a fee.

20 (3) All petitions for expungement shall be docketed in the original
21 criminal action. Any person who may have relevant information about the
22 petitioner may testify at the hearing. The court may inquire into the
23 background of the petitioner and shall have access to any reports or
24 records relating to the petitioner that are on file with the secretary of
25 corrections or the prisoner review board.

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

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

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

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

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

43 (1) Upon conviction for any subsequent crime, the conviction that

1 was expunged may be considered as a prior conviction in determining the
2 sentence to be imposed;

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

5 (A) In any application for licensure as a private detective, private
6 detective agency, certification as a firearms trainer pursuant to K.S.A.
7 2014 Supp. 75-7b21, and amendments thereto, or employment as a
8 detective with a private detective agency, as defined by K.S.A. 75-7b01,
9 and amendments thereto; as security personnel with a private patrol
10 operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with
11 an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of
12 the Kansas department for aging and disability services;

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

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

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

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

30 (F) upon application for a commercial driver's license under K.S.A.
31 8-2,125 through 8-2,142, and amendments thereto;

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

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

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

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

42 (K) for applications received on and after July 1, 2006, to aid in
43 determining the petitioner's qualifications for a license to carry a concealed

1 weapon pursuant to the personal and family protection act, K.S.A. 2014
2 Supp. 75-7c01 et seq., and amendments thereto;

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

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

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

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

19 (k) (1) Subject to the disclosures required pursuant to subsection (i),
20 in any application for employment, license or other civil right or privilege,
21 or any appearance as a witness, a person whose arrest records, conviction
22 or diversion of a crime has been expunged under this statute may state that
23 such person has never been arrested, convicted or diverted of such crime.

24 (2) Notwithstanding the provisions of subsection (k)(1), and except as
25 provided in ~~subsection (a)(3)(A)~~ of K.S.A. 2014 Supp. 21-6304(a)(3)(A),
26 and amendments thereto, the expungement of a prior felony conviction
27 does not relieve the individual of complying with any state or federal law
28 relating to the use, shipment, transportation, receipt or possession of
29 firearms by persons previously convicted of a felony.

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

35 (1) The person whose record was expunged;

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

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

42 (4) the secretary for aging and disability services, or a designee of the
43 secretary, for the purpose of obtaining information relating to employment

1 in an institution, as defined in K.S.A. 76-12a01, and amendments thereto,
2 of the Kansas department for aging and disability services of any person
3 whose record has been expunged;

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

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

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

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

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

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

34 (11) the Kansas sentencing commission;

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

40 (13) the Kansas securities commissioner or a designee of the
41 commissioner, and the request is accompanied by a statement that the
42 request is being made in conjunction with an application for registration as
43 a broker-dealer, agent, investment adviser or investment adviser

1 representative by such agency and the application was submitted by the
2 person whose record has been expunged;

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

7 (15) a law enforcement agency and the request is accompanied by a
8 statement that the request is being made to aid in determining eligibility
9 for employment as a law enforcement officer as defined by K.S.A. 22-
10 2202, and amendments thereto;

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

15 (17) the Kansas bureau of investigation for the purposes of:

16 (A) Completing a person's criminal history record information within
17 the central repository, in accordance with K.S.A. 22-4701 et seq., and
18 amendments thereto; or

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

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

24 Sec. 3. K.S.A. 2014 Supp. 12-4516, 12-4516b, 21-6614 and 21-6614e
25 are hereby repealed.

26 Sec. 4. This act shall take effect and be in force from and after its
27 publication in the statute book.