

SENATE BILL No. 116

By Committee on Federal and State Affairs

1-29

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

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 thereto, 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:

15 (a) Three or more times of:

16 (1) Vehicular 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. 2014 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 ~~criminal 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. 2014 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 those 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 rescinding 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:

1 (A) Satisfied the sentence imposed; or

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

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 if:

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

1 being instituted against the petitioner;

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

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

5 (i) When the court has ordered an arrest record, conviction or
6 diversion expunged, the order of expungement shall state the information
7 required to be contained in the petition. The clerk of the court shall send a
8 certified copy of the order of expungement to the Kansas bureau of
9 investigation which shall notify the federal bureau of investigation, the
10 secretary of corrections and any other criminal justice agency which may
11 have a record of the arrest, conviction or diversion. After the order of
12 expungement is entered, the petitioner shall be treated as not having been
13 arrested, convicted or diverted of the crime, except that:

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

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

19 (A) In any application for *licensure as a private detective, private*
20 *detective agency, certification as a firearms trainer pursuant to K.S.A.*
21 *2014 Supp. 75-7b21, and amendments thereto, or employment as a*
22 *detective with a private detective agency, as defined by K.S.A. 75-7b01,*
23 *and amendments thereto; as security personnel with a private patrol*
24 *operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with*
25 *an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of*
26 *the department for ~~children and families~~ aging and disability services;*

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

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

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

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

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

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

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

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

13 (K) for applications received on and after July 1, 2006, to aid in
14 determining the petitioner's qualifications for a license to carry a concealed
15 weapon pursuant to the personal and family protection act, K.S.A. 2014
16 Supp. 75-7c01 et seq., 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 ~~of the department for children and families~~ *for aging*
4 *and disability services*, or a designee of the secretary, for the purpose of
5 obtaining information relating to employment in an institution, as defined
6 in K.S.A. 76-12a01, and amendments thereto, of the *Kansas* department
7 ~~for children and families~~ *aging and disability services* of any person whose
8 record has been expunged;

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

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

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

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

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

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

40 (11) the state gaming agency, and the request is accompanied by a
41 statement that the request is being made to aid in determining
42 qualifications: (A) To be an employee of the state gaming agency; or (B)
43 to be an employee of a tribal gaming commission or to hold a license

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

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-drug-crime~~ *felony* ranked in severity levels 1
22 through 5 of the *nondrug 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;

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

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

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

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

15 (e) There shall be no expungement of convictions for the following
16 offenses or of convictions for an attempt to commit any of the following
17 offenses:

18 (1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.
19 2014 Supp. 21-5503, and amendments thereto;

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

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

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

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

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

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

36 (8) endangering a child or aggravated endangering a child, as defined
37 in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2014 Supp.
38 21-5601, and amendments thereto;

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

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

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

1 its repeal, or K.S.A. 2014 Supp. 21-5402, and amendments thereto;

2 (12) murder in the second degree, as defined in K.S.A. 21-3402, prior
3 to its repeal, or K.S.A. 2014 Supp. 21-5403, and amendments thereto;

4 (13) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to
5 its repeal, or K.S.A. 2014 Supp. 21-5404, and amendments thereto;

6 (14) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to
7 its repeal, or K.S.A. 2014 Supp. 21-5405, and amendments thereto;

8 (15) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal,
9 or K.S.A. 2014 Supp. 21-5505, and amendments thereto, when the victim
10 was less than 18 years of age at the time the crime was committed;

11 (16) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to
12 its repeal, or K.S.A. 2014 Supp. 21-5505, and amendments thereto;

13 (17) a violation of K.S.A. 8-2,144, and amendments thereto,
14 including any diversion for such violation; or

15 (18) any conviction for any offense in effect at any time prior to July
16 1, 2011, that is comparable to any offense as provided in this subsection.

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

23 (g) (1) When a petition for expungement is filed, the court shall set a
24 date for a hearing of such petition and shall cause notice of such hearing to
25 be given to the prosecutor and the arresting law enforcement agency. The
26 petition shall state the:

27 (A) Defendant's full name;

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

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

31 (D) crime for which the defendant was arrested, convicted or
32 diverted;

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

34 (F) identity of the convicting court, arresting law enforcement
35 authority or diverting authority.

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

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

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

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

12 (2) the circumstances and behavior of the petitioner warrant the
13 expungement; and

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

15 (i) When the court has ordered an arrest record, conviction or
16 diversion expunged, the order of expungement shall state the information
17 required to be contained in the petition. The clerk of the court shall send a
18 certified copy of the order of expungement to the Kansas bureau of
19 investigation which shall notify the federal bureau of investigation, the
20 secretary of corrections and any other criminal justice agency which may
21 have a record of the arrest, conviction or diversion. After the order of
22 expungement is entered, the petitioner shall be treated as not having been
23 arrested, convicted or diverted of the crime, except that:

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

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

29 (A) In any application for licensure as a private detective, private
30 detective agency, certification as a firearms trainer pursuant to K.S.A.
31 2014 Supp. 75-7b21, and amendments thereto, or employment as a
32 detective with a private detective agency, as defined by K.S.A. 75-7b01,
33 and amendments thereto; as security personnel with a private patrol
34 operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with
35 an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of
36 the Kansas department for aging and disability services;

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

39 (C) to aid in determining the petitioner's qualifications for
40 employment with the Kansas lottery or for work in sensitive areas within
41 the Kansas lottery as deemed appropriate by the executive director of the
42 Kansas lottery;

43 (D) to aid in determining the petitioner's qualifications for executive

1 director of the Kansas racing and gaming commission, for employment
2 with the commission or for work in sensitive areas in parimutuel racing as
3 deemed appropriate by the executive director of the commission, or to aid
4 in determining qualifications for licensure or renewal of licensure by the
5 commission;

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

11 (F) upon application for a commercial driver's license under K.S.A. 8-
12 2,125 through 8-2,142, and amendments thereto;

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

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

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

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

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

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

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

32 (5) upon commitment to the custody of the secretary of corrections,
33 any previously expunged record in the possession of the secretary of
34 corrections may be reinstated and the expungement disregarded, and the
35 record continued for the purpose of the new commitment.

36 (j) Whenever a person is convicted of a crime, pleads guilty and pays
37 a fine for a crime, is placed on parole, postrelease supervision or
38 probation, is assigned to a community correctional services program, is
39 granted a suspended sentence or is released on conditional release, the
40 person shall be informed of the ability to expunge the arrest records or
41 conviction. Whenever a person enters into a diversion agreement, the
42 person shall be informed of the ability to expunge the diversion.

43 (k) (1) Subject to the disclosures required pursuant to subsection (i),

1 in any application for employment, license or other civil right or privilege,
2 or any appearance as a witness, a person whose arrest records, conviction
3 or diversion of a crime has been expunged under this statute may state that
4 such person has never been arrested, convicted or diverted of such crime.

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

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

16 (1) The person whose record was expunged;

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

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

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

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

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

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

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

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

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

15 (11) the Kansas sentencing commission;

16 (12) 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-gaming compact;

21 (13) 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 (14) the Kansas commission on peace officers' standards and training
28 and the request is accompanied by a statement that the request is being
29 made to aid in determining certification eligibility as a law enforcement
30 officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto;

31 (15) a law enforcement agency and the request is accompanied by a
32 statement that the request is being made to aid in determining eligibility
33 for employment as a law enforcement officer as defined by K.S.A. 22-
34 2202, and amendments thereto;

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

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

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

43 (B) providing information or documentation to the federal bureau of

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.