

Substitute for SENATE BILL No. 22

By Committee on Judiciary

1-21

1 AN ACT concerning courts; relating to municipal court; notice; amending
2 K.S.A. 2015 Supp. 12-4516, 21-6614, 22-2410 and 22-3609 and
3 repealing the existing sections; also repealing K.S.A. 2015 Supp. 12-
4 4516d and 21-6614f.

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

7 Section 1. K.S.A. 2015 Supp. 12-4516 is hereby amended to read as
8 follows: 12-4516. (a) (1) Except as provided in subsections (b), (c), (d), (e)
9 and (f), any person who has been convicted of a violation of a city
10 ordinance of this state may petition the convicting court for the
11 expungement of such conviction and related arrest records if three or more
12 years have elapsed since the person:

13 (A) Satisfied the sentence imposed; or

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

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

21 (b) Any person convicted of a violation of any ordinance that is
22 prohibited by either K.S.A. 2015 Supp. 12-16,134(a) or (b), and
23 amendments thereto, and which was adopted prior to July 1, 2014, or who
24 entered into a diversion agreement in lieu of further criminal proceedings
25 for such violation, may petition the convicting court for the expungement
26 of such conviction or diversion agreement and related arrest records.

27 (c) Any person convicted of the violation of a city ordinance which
28 would also constitute a violation of K.S.A. 21-3512, prior to its repeal, or a
29 violation of K.S.A. 2015 Supp. 21-6419, and amendments thereto, or who
30 entered into a diversion agreement in lieu of further criminal proceedings
31 for such violation, may petition the convicting court for the expungement
32 of such conviction or diversion agreement and related arrest records if:

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

36 (2) such person can prove they were acting under coercion caused by

1 the act of another. For purposes of this subsection, "coercion" means:
2 Threats of harm or physical restraint against any person; a scheme, plan or
3 pattern intended to cause a person to believe that failure to perform an act
4 would result in bodily harm or physical restraint against any person; or the
5 abuse or threatened abuse of the legal process.

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

11 (1) Vehicular homicide, as defined by K.S.A. 21-3405, prior to its
12 repeal, or K.S.A. 2015 Supp. 21-5406, and amendments thereto;

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

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

18 (4) a violation of the provisions of K.S.A. 8-142 *Fifth*, and
19 amendments thereto, relating to fraudulent applications;

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

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

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

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

28 (e) (1) No person may petition for expungement until five or more
29 years have elapsed since the person satisfied the sentence imposed or the
30 terms of a diversion agreement or was discharged from probation, parole,
31 conditional release or a suspended sentence, if such person was convicted
32 of a first violation of a city ordinance which would also constitute a first
33 violation of K.S.A. 8-1567 or K.S.A. 2015 Supp. 8-1025, and amendments
34 thereto.

35 (2) No person may petition for expungement until 10 or more years
36 have elapsed since the person satisfied the sentence imposed or was
37 discharged from probation, parole, conditional release or a suspended
38 sentence, if such person was convicted of a second or subsequent violation
39 of a city ordinance which would also constitute a second or subsequent
40 violation of K.S.A. 8-1567 or K.S.A. 2015 Supp. 8-1025, and amendments
41 thereto.

42 (f) There shall be no expungement of convictions or diversions for a
43 violation of a city ordinance which would also constitute a violation of

1 K.S.A. 8-2,144, and amendments thereto.

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

6 (A) Defendant's full name;

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

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

10 (D) crime for which the defendant was arrested, convicted or
11 diverted;

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

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

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

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

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

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

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

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

30 (i) When the court has ordered an arrest record, conviction or
31 diversion expunged, the order of expungement shall state the information
32 required to be contained in the petition. The clerk of the court shall send a
33 certified copy of the order of expungement to the Kansas bureau of
34 investigation which shall notify the federal bureau of investigation, the
35 secretary of corrections and any other criminal justice agency which may
36 have a record of the arrest, conviction or diversion. *If the case was*
37 *appealed from municipal court, the clerk of the district court shall send a*
38 *certified copy of the order of expungement to the municipal court. The*
39 *municipal court shall order the case expunged once the certified copy of*
40 *the order of expungement is received.* After the order of expungement is
41 entered, the petitioner shall be treated as not having been arrested,
42 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 2015 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. 2015
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 arrest, conviction or diversion is to be
5 disclosed; and

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

9 (j) Whenever a person is convicted of an ordinance violation, pleads
10 guilty and pays a fine for such a violation, is placed on parole or probation
11 or is granted a suspended sentence for such a violation, the person shall be
12 informed of the ability to expunge the arrest records or conviction.
13 Whenever a person enters into a diversion agreement, the person shall be
14 informed of the ability to expunge the diversion.

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

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

25 (1) The person whose record was expunged;

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

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

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

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

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

43 (7) the supreme court, the clerk or disciplinary administrator thereof,

1 the state board for admission of attorneys or the state board for discipline
2 of attorneys, and the request is accompanied by a statement that the
3 request is being made in conjunction with an application for admission, or
4 for an order of reinstatement, to the practice of law in this state by the
5 person whose record has been expunged;

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

11 (9) the governor or the Kansas racing and gaming commission, or a
12 designee of the commission, and the request is accompanied by a
13 statement that the request is being made to aid in determining
14 qualifications for executive director of the commission, for employment
15 with the commission, for work in sensitive areas in parimutuel racing as
16 deemed appropriate by the executive director of the commission or for
17 licensure, renewal of licensure or continued licensure by the commission;

18 (10) the Kansas racing and gaming commission, or a designee of the
19 commission, and the request is accompanied by a statement that the
20 request is being made to aid in determining qualifications of the following
21 under the Kansas expanded lottery act:

22 (A) Lottery gaming facility managers and prospective managers,
23 racetrack gaming facility managers and prospective managers, licensees
24 and certificate holders; and

25 (B) their officers, directors, employees, owners, agents and
26 contractors;

27 (11) the state gaming agency, and the request is accompanied by a
28 statement that the request is being made to aid in determining
29 qualifications:

30 (A) To be an employee of the state gaming agency; or

31 (B) to be an employee of a tribal gaming commission or to hold a
32 license issued pursuant to a tribal-state gaming compact;

33 (12) the Kansas securities commissioner, or a designee of the
34 commissioner, and the request is accompanied by a statement that the
35 request is being made in conjunction with an application for registration as
36 a broker-dealer, agent, investment adviser or investment adviser
37 representative by such agency and the application was submitted by the
38 person whose record has been expunged;

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

43 (14) the Kansas sentencing commission;

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

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

9 Sec. 2. K.S.A. 2015 Supp. 21-6614 is hereby amended to read as
10 follows: 21-6614. (a) (1) Except as provided in subsections (b), (c), (d), (e)
11 and (f), any person convicted in this state of a traffic infraction, cigarette
12 or tobacco infraction, misdemeanor or a class D or E felony, or for crimes
13 committed on or after July 1, 1993, any nongrid felony or felony ranked in
14 severity levels 6 through 10 of the nondrug grid, or for crimes committed
15 on or after July 1, 1993, but prior to July 1, 2012, any felony ranked in
16 severity level 4 of the drug grid, or for crimes committed on or after July
17 1, 2012, any felony ranked in severity level 5 of the drug grid may petition
18 the convicting court for the expungement of such conviction or related
19 arrest records if three or more years have elapsed since the person: (A)
20 Satisfied the sentence imposed; or (B) was discharged from probation, a
21 community correctional services program, parole, postrelease supervision,
22 conditional release or a suspended sentence.

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

28 (b) Any person convicted of prostitution, as defined in K.S.A. 21-
29 3512, prior to its repeal, convicted of a violation of K.S.A. 2015 Supp. 21-
30 6419, and amendments thereto, or who entered into a diversion agreement
31 in lieu of further criminal proceedings for such violation, may petition the
32 convicting court for the expungement of such conviction or diversion
33 agreement and related arrest records if:

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

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

1 (c) Except as provided in subsections (e) and (f), no person may
2 petition for expungement until five or more years have elapsed since the
3 person satisfied the sentence imposed or the terms of a diversion
4 agreement or was discharged from probation, a community correctional
5 services program, parole, postrelease supervision, conditional release or a
6 suspended sentence, if such person was convicted of a class A, B or C
7 felony, or for crimes committed on or after July 1, 1993, if convicted of an
8 off-grid felony or any felony ranked in severity levels 1 through 5 of the
9 nondrug grid, or for crimes committed on or after July 1, 1993, but prior to
10 July 1, 2012, any felony ranked in severity levels 1 through 3 of the drug
11 grid, or for crimes committed on or after July 1, 2012, any felony ranked
12 in severity levels 1 through 4 of the drug grid, or:

13 (1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its
14 repeal, or K.S.A. 2015 Supp. 21-5406, and amendments thereto, or as
15 prohibited by any law of another state which is in substantial conformity
16 with that statute;

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

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

25 (4) violating the provisions of K.S.A. 8-142 *Fifth*, and amendments
26 thereto, relating to fraudulent applications or violating the provisions of a
27 law of another state which is in substantial conformity with that statute;

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

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

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

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

37 (d) (1) No person may petition for expungement until five or more
38 years have elapsed since the person satisfied the sentence imposed or the
39 terms of a diversion agreement or was discharged from probation, a
40 community correctional services program, parole, postrelease supervision,
41 conditional release or a suspended sentence, if such person was convicted
42 of a first violation of K.S.A. 8-1567 or K.S.A. 2015 Supp. 8-1025, and
43 amendments thereto, including any diversion for such violation.

1 (2) No person may petition for expungement until 10 or more years
2 have elapsed since the person satisfied the sentence imposed or was
3 discharged from probation, a community correctional services program,
4 parole, postrelease supervision, conditional release or a suspended
5 sentence, if such person was convicted of a second or subsequent violation
6 of K.S.A. 8-1567 or K.S.A. 2015 Supp. 8-1025, and amendments thereto.

7 (e) There shall be no expungement of convictions for the following
8 offenses or of convictions for an attempt to commit any of the following
9 offenses:

10 (1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.
11 2015 Supp. 21-5503, and amendments thereto;

12 (2) indecent liberties with a child or aggravated indecent liberties
13 with a child, as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal,
14 or K.S.A. 2015 Supp. 21-5506, and amendments thereto;

15 (3) criminal sodomy, as defined in K.S.A. 21-3505(a)(2) or (a)(3),
16 prior to its repeal, or K.S.A. 2015 Supp. 21-5504(a)(3) or (a)(4), and
17 amendments thereto;

18 (4) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior
19 to its repeal, or K.S.A. 2015 Supp. 21-5504, and amendments thereto;

20 (5) indecent solicitation of a child or aggravated indecent solicitation
21 of a child, as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal,
22 or K.S.A. 2015 Supp. 21-5508, and amendments thereto;

23 (6) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior
24 to its repeal, or K.S.A. 2015 Supp. 21-5510, and amendments thereto;

25 (7) aggravated incest, as defined in K.S.A. 21-3603, prior to its
26 repeal, or K.S.A. 2015 Supp. 21-5604, and amendments thereto;

27 (8) endangering a child or aggravated endangering a child, as defined
28 in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2015 Supp.
29 21-5601, and amendments thereto;

30 (9) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal,
31 or K.S.A. 2015 Supp. 21-5602, and amendments thereto;

32 (10) capital murder, as defined in K.S.A. 21-3439, prior to its repeal,
33 or K.S.A. 2015 Supp. 21-5401, and amendments thereto;

34 (11) murder in the first degree, as defined in K.S.A. 21-3401, prior to
35 its repeal, or K.S.A. 2015 Supp. 21-5402, and amendments thereto;

36 (12) murder in the second degree, as defined in K.S.A. 21-3402, prior
37 to its repeal, or K.S.A. 2015 Supp. 21-5403, and amendments thereto;

38 (13) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to
39 its repeal, or K.S.A. 2015 Supp. 21-5404, and amendments thereto;

40 (14) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to
41 its repeal, or K.S.A. 2015 Supp. 21-5405, and amendments thereto;

42 (15) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal,
43 or K.S.A. 2015 Supp. 21-5505, and amendments thereto, when the victim

1 was less than 18 years of age at the time the crime was committed;

2 (16) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to
3 its repeal, or K.S.A. 2015 Supp. 21-5505, and amendments thereto;

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

6 (18) any conviction for any offense in effect at any time prior to July
7 1, 2011, that is comparable to any offense as provided in this subsection.

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

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

18 (A) Defendant's full name;

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

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

22 (D) crime for which the defendant was arrested, convicted or
23 diverted;

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

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

27 (2) Except as otherwise provided by law, a petition for expungement
28 shall be accompanied by a docket fee in the amount of \$176. On and after
29 July 1, 2013 2015, through ~~July 1, 2015~~ June 30, 2017, the supreme court
30 may impose a charge, not to exceed \$19 per case, to fund the costs of non-
31 judicial personnel. The charge established in this section shall be the only
32 fee collected or moneys in the nature of a fee collected for the case. Such
33 charge shall only be established by an act of the legislature and no other
34 authority is established by law or otherwise to collect a fee.

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

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

43 (1) The petitioner has not been convicted of a felony in the past two

1 years and no proceeding involving any such crime is presently pending or
2 being instituted against the petitioner;

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

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

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

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

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

24 (A) In any application for licensure as a private detective, private
25 detective agency, certification as a firearms trainer pursuant to K.S.A.
26 2015 Supp. 75-7b21, and amendments thereto, or employment as a
27 detective with a private detective agency, as defined by K.S.A. 75-7b01,
28 and amendments thereto; as security personnel with a private patrol
29 operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with
30 an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of
31 the Kansas department for aging and disability services;

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

34 (C) to aid in determining the petitioner's qualifications for
35 employment with the Kansas lottery or for work in sensitive areas within
36 the Kansas lottery as deemed appropriate by the executive director of the
37 Kansas lottery;

38 (D) to aid in determining the petitioner's qualifications for executive
39 director of the Kansas racing and gaming commission, for employment
40 with the commission or for work in sensitive areas in parimutuel racing as
41 deemed appropriate by the executive director of the commission, or to aid
42 in determining qualifications for licensure or renewal of licensure by the
43 commission;

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

6 (F) upon application for a commercial driver's license under K.S.A.
7 8-2,125 through 8-2,142, and amendments thereto;

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

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

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

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

18 (K) for applications received on and after July 1, 2006, to aid in
19 determining the petitioner's qualifications for a license to carry a concealed
20 weapon pursuant to the personal and family protection act, K.S.A. 2015
21 Supp. 75-7c01 et seq., and amendments thereto;

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

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

27 (5) upon commitment to the custody of the secretary of corrections,
28 any previously expunged record in the possession of the secretary of
29 corrections may be reinstated and the expungement disregarded, and the
30 record continued for the purpose of the new commitment.

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

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

43 (2) Notwithstanding the provisions of subsection (k)(1), and except as

1 provided in K.S.A. 2015 Supp. 21-6304(a)(3)(A), and amendments
2 thereto, the expungement of a prior felony conviction does not relieve the
3 individual of complying with any state or federal law relating to the use,
4 shipment, transportation, receipt or possession of firearms by persons
5 previously convicted of a felony.

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

11 (1) The person whose record was expunged;

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

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

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

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

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

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

34 (8) the Kansas lottery, and the request is accompanied by a statement
35 that the request is being made to aid in determining qualifications for
36 employment with the Kansas lottery or for work in sensitive areas within
37 the Kansas lottery as deemed appropriate by the executive director of the
38 Kansas lottery;

39 (9) the governor or the Kansas racing and gaming commission, or a
40 designee of the commission, and the request is accompanied by a
41 statement that the request is being made to aid in determining
42 qualifications for executive director of the commission, for employment
43 with the commission, for work in sensitive areas in parimutuel racing as

1 deemed appropriate by the executive director of the commission or for
2 licensure, renewal of licensure or continued licensure by the commission;

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

10 (11) the Kansas sentencing commission;

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

16 (13) the Kansas securities commissioner or a designee of the
17 commissioner, and the request is accompanied by a statement that the
18 request is being made in conjunction with an application for registration as
19 a broker-dealer, agent, investment adviser or investment adviser
20 representative by such agency and the application was submitted by the
21 person whose record has been expunged;

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

26 (15) a law enforcement agency and the request is accompanied by a
27 statement that the request is being made to aid in determining eligibility
28 for employment as a law enforcement officer as defined by K.S.A. 22-
29 2202, and amendments thereto;

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

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

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

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

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

43 Sec. 3. K.S.A. 2015 Supp. 22-2410 is hereby amended to read as

1 follows: 22-2410. (a) Any person who has been arrested in this state may
2 petition the district court for the expungement of such arrest record.

3 (b) When a petition for expungement is filed, the court shall set a date
4 for hearing on such petition and shall cause notice of such hearing to be
5 given to the prosecuting attorney and the arresting law enforcement
6 agency. When a petition for expungement is filed, the official court file
7 shall be separated from the other records of the court, and shall be
8 disclosed only to a judge of the court and members of the staff of the court
9 designated by a judge of the district court, the prosecuting attorney, the
10 arresting law enforcement agency, or any other person when authorized by
11 a court order, subject to any conditions imposed by the order. Except as
12 otherwise provided by law, a petition for expungement shall be
13 accompanied by a docket fee in the amount of \$176. Except as provided
14 further, the docket fee established in this section shall be the only fee
15 collected or moneys in the nature of a fee collected for the docket fee.
16 Such fee shall only be established by an act of the legislature and no other
17 authority is established by law or otherwise to collect a fee. On and after
18 July 1, 2015, through June 30, 2017, the supreme court may impose an
19 additional charge, not to exceed \$19 per docket fee, to fund the costs of
20 non-judicial personnel. The petition shall state:

- 21 (1) The petitioner's full name;
- 22 (2) the full name of the petitioner at the time of arrest, if different
23 than the petitioner's current name;
- 24 (3) the petitioner's sex, race and date of birth;
- 25 (4) the crime for which the petitioner was arrested;
- 26 (5) the date of the petitioner's arrest; and
- 27 (6) the identity of the arresting law enforcement agency.

28 No surcharge or fee shall be imposed to any person filing a petition
29 pursuant to this section, who was arrested as a result of being a victim of
30 identity theft under K.S.A. 21-4018, prior to its repeal, or K.S.A. 2015
31 Supp. 21-6107(a), and amendments thereto, or who has had criminal
32 charges dismissed because a court has found that there was no probable
33 cause for the arrest, the petitioner was found not guilty in court
34 proceedings or the charges have been dismissed. Any person who may
35 have relevant information about the petitioner may testify at the hearing.
36 The court may inquire into the background of the petitioner.

37 (c) At the hearing on a petition for expungement, the court shall order
38 the arrest record and subsequent court proceedings, if any, expunged upon
39 finding: (1) The arrest occurred because of mistaken identity;

- 40 (2) a court has found that there was no probable cause for the arrest;
- 41 (3) the petitioner was found not guilty in court proceedings; or
- 42 (4) the expungement would be in the best interests of justice and: (A)
43 Charges have been dismissed; or (B) no charges have been or are likely to

1 be filed.

2 (d) When the court has ordered expungement of an arrest record and
3 subsequent court proceedings, if any, the order shall state the information
4 required to be stated in the petition and shall state the grounds for
5 expungement under subsection (c). The clerk of the court shall send a
6 certified copy of the order to the Kansas bureau of investigation which
7 shall notify the federal bureau of investigation, the secretary of corrections
8 and any other criminal justice agency which may have a record of the
9 arrest. *If the case was appealed from municipal court, the clerk of the*
10 *district court shall send a certified copy of the order of expungement to the*
11 *municipal court. The municipal court shall order the case expunged once*
12 *the certified copy of the order of expungement is received.* If an order of
13 expungement is entered, the petitioner shall be treated as not having been
14 arrested.

15 (e) If the ground for expungement is as provided in subsection (c)(4),
16 the court shall determine whether, in the interests of public welfare, the
17 records should be available for any of the following purposes: (1) In any
18 application for employment as a detective with a private detective agency,
19 as defined in K.S.A. 75-7b01, and amendments thereto; as security
20 personnel with a private patrol operator, as defined by K.S.A. 75-7b01,
21 and amendments thereto; or with an institution, as defined in K.S.A. 76-
22 12a01, and amendments thereto, of the Kansas department for aging and
23 disability services;

24 (2) in any application for admission, or for an order of reinstatement,
25 to the practice of law in this state;

26 (3) to aid in determining the petitioner's qualifications for
27 employment with the Kansas lottery or for work in sensitive areas within
28 the Kansas lottery as deemed appropriate by the executive director of the
29 Kansas lottery;

30 (4) to aid in determining the petitioner's qualifications for executive
31 director of the Kansas racing commission, for employment with the
32 commission or for work in sensitive areas in parimutuel racing as deemed
33 appropriate by the executive director of the commission, or to aid in
34 determining qualifications for licensure or renewal of licensure by the
35 commission;

36 (5) in any application for a commercial driver's license under K.S.A.
37 8-2,125 through 8-2,142, and amendments thereto;

38 (6) to aid in determining the petitioner's qualifications to be an
39 employee of the state gaming agency;

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

43 (8) in any other circumstances which the court deems appropriate.

1 (f) The court shall make all expunged records and related information
2 in such court's possession, created prior to, on and after July 1, 2011,
3 available to the Kansas bureau of investigation for the purposes of:

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

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

10 (g) Subject to any disclosures required under subsection (e), in any
11 application for employment, license or other civil right or privilege, or any
12 appearance as a witness, a person whose arrest records have been
13 expunged as provided in this section may state that such person has never
14 been arrested.

15 (h) Whenever a petitioner's arrest records have been expunged as
16 provided in this section, the custodian of the records of arrest,
17 incarceration due to arrest or court proceedings related to the arrest, shall
18 not disclose the arrest or any information related to the arrest, except as
19 directed by the order of expungement or when requested by the person
20 whose arrest record was expunged.

21 (i) The docket fee collected at the time the petition for expungement
22 is filed shall be disbursed in accordance with K.S.A. 20-362, and
23 amendments thereto.

24 Sec. 4. K.S.A. 2015 Supp. 22-3609 is hereby amended to read as
25 follows: 22-3609. (†) (a) The defendant shall have the right to appeal to
26 the district court of the county from any judgment of a municipal court
27 which adjudges the defendant guilty of a violation of the ordinances of any
28 municipality of Kansas or any findings of contempt. The appeal shall be
29 assigned by the chief judge to a district judge. The appeal shall stay all
30 further proceedings upon the judgment appealed from.

31 (‡) (b) An appeal to the district court shall be taken by filing, in the
32 district court of the county in which the municipal court is located, a notice
33 of appeal and any appearance bond required by the municipal court.
34 Municipal court clerks are hereby authorized to accept notices of appeal
35 and appearance bonds under this subsection and shall forward such notices
36 and bonds to the district court. No appeal shall be filed until after the
37 sentence has been imposed. No appeal shall be taken more than 14 days
38 after the date the sentence is imposed.

39 (‡) (c) The notice of appeal shall designate the judgment or part of
40 the judgment appealed from. The defendant shall cause notice of the
41 appeal to be served upon the city attorney prosecuting the case. The judge
42 whose judgment is appealed from or the clerk of the court, if there is one,
43 shall certify the complaint and warrant to the district court of the county,

1 but failure to do so shall not affect the validity of the appeal.

2 ~~(4)~~ (d) Except as provided herein, the trial of municipal appeal cases
3 shall be to the court unless a jury trial is requested in writing by the
4 defendant not later than seven days after first notice of trial assignment is
5 given to the defendant or such defendant's counsel. The time requirement
6 provided in this subsection regarding when a jury trial shall be requested
7 may be waived in the discretion of the court upon a finding that imposing
8 such time requirement would cause undue hardship or prejudice to the
9 defendant. A jury in a municipal appeal case shall consist of six members.
10 All appeals taken by a defendant from a municipal judge in contempt
11 findings, cigarette or tobacco infraction or traffic infraction cases shall be
12 tried by the court.

13 ~~(5)~~ (e) Notwithstanding the other provisions of this section, appeal
14 from a conviction rendered pursuant to ~~subsection (b)~~ of K.S.A. 12-
15 4416(b), and amendments thereto, shall be conducted only on the record of
16 the stipulation of facts relating to the complaint.

17 (f) *At the conclusion of the case, the district court shall send notice of*
18 *dismissal, conviction or acquittal to the municipal court clerk.*

19 Sec. 5. K.S.A. 2015 Supp. 12-4516, 12-4516d, 21-6614, 21-6614f,
20 22-2410 and 22-3609 are hereby repealed.

21 Sec. 6. This act shall take effect and be in force from and after its
22 publication in the statute book.