

PROPOSED Senate Substitute for HOUSE BILL NO. 2361

By Committee on Judiciary

AN ACT concerning courts; relating to specialty court programs; authorizing the supreme court to adopt rules related thereto; establishing the specialty court funding advisory committee and the specialty court resources fund; authorizing courts to order defendants to participate in specialty court programs; allowing expungement of certain convictions when defendants complete the requirements of such programs; amending K.S.A. 2021 Supp. 21-6604 and 21-6614 and repealing the existing sections.

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

New Section 1. (a) The supreme court shall adopt rules for the establishment and operation of one or more specialty court programs within the state. The chief judge of a judicial district may establish a specialty court program in accordance with the rules adopted by the supreme court.

(b) (1) There is hereby established a specialty court funding advisory committee within the judicial branch. The committee shall:

(A) Evaluate resources available for assessment and treatment of people assigned to specialty courts or for the operation of specialty courts;

(B) secure grants, funds and other property and services necessary or advantageous to facilitate the operation of specialty courts;

(C) recommend to the judicial administrator the allocation of resources among the various specialty courts operating within the state; and

(D) recommend legislation and rules to aid the development of specialty courts.

(2) The committee shall consist of the following members:

(A) The chairperson of the standing committee on judiciary in the house of representatives, or the chairperson's designee;

(B) the chairperson of the standing committee on judiciary in the senate, or the

chairperson's designee;

(C) the chairperson of the legislative budget committee created pursuant to K.S.A. 46-1208, and amendments thereto, or the chairperson's designee;

(D) one member of the legislature from the minority party appointed jointly by the minority leader in the house of representatives and the minority leader in the senate;

(E) five members appointed by the chief justice of the supreme court, including one representative of the prosecutors throughout the state and one representative of the criminal defense attorneys throughout the state;

(F) one member appointed by the secretary of corrections who shall serve as an ex officio, nonvoting member;

(G) one member appointed by the secretary for aging and disability services who shall serve as an ex officio, nonvoting member; and

(H) a drug and alcohol addiction treatment provider appointed by the Kansas sentencing commission who shall serve as an ex officio, nonvoting member.

(3) Three members appointed by the chief justice shall be appointed for a term of three years. Two members appointed by the chief justice shall be appointed for a term of two years. The ex officio, nonvoting members shall be appointed for a term of two years. Members shall serve until a qualified successor is appointed. Vacancies shall be filled in the same manner as provided in this subsection. Members of the committee shall be appointed prior to August 1, 2022.

(4) The chief justice of the supreme court shall designate the chairperson of the committee.

(5) The office of judicial administration may provide technical assistance to the

committee.

(6) All members of the committee who are not judicial members shall receive compensation, travel expenses and subsistence expenses or allowances as provided in K.S.A. 75-3212, and amendments thereto. Judicial members shall receive reimbursement for travel expenses and subsistence expenses or allowances as provided in K.S.A. 75-3212, and amendments thereto.

(7) Nothing in this section shall prohibit any judicial district, local government or the judicial branch from directly applying for, receiving and retaining funding to facilitate the operation of specialty courts. Funds received by a judicial district or local government shall not be remitted to the state treasurer in accordance with this section.

(c) (1) There is hereby established the specialty court resources fund in the state treasury which shall be administered by the judicial administrator. All expenditures from the specialty court resources fund shall be for the purpose of operating specialty court programs established pursuant to this section, including administrative costs related to such programs. All expenditures from the fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the judicial administrator or the judicial administrator's designee.

(2) Funds acquired through appropriations, grants, gifts, contributions and other public or private sources that are designated for specialty court operations shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount into the state treasury to the credit of the specialty court resources fund.

(d) (1) If a person is sentenced to participate in a specialty courts program pursuant to

K.S.A. 2021 Supp. 21-6604, and amendments thereto, and the person successfully completes such program, the person's sentence may be reduced or modified.

(2) Nothing in this subsection shall be construed to authorize a judge to impose, modify or reduce a sentence below the minimum sentence required by law.

(e) For the purposes of this section, "specialty court" means a district court program that uses therapeutic or problem-solving procedures to address underlying factors that may be contributing to a person's involvement in the judicial system, including, but not limited to, mental illness or drug, alcohol or other addictions. Procedures may include treatment, mandatory periodic testing for prohibited drugs or other substances, community supervision and appropriate sanctions and incentives.

Sec. 2. K.S.A. 2021 Supp. 21-6604 is hereby amended to read as follows: 21-6604. (a) Whenever any person has been found guilty of a crime, the court may adjudge any of the following:

(1) Commit the defendant to the custody of the secretary of corrections if the current crime of conviction is a felony and the sentence presumes imprisonment, or the sentence imposed is a dispositional departure to imprisonment; or, if confinement is for a misdemeanor, to jail for the term provided by law;

(2) impose the fine applicable to the offense and may impose the provisions of subsection (q);

(3) release the defendant on probation if the current crime of conviction and criminal history fall within a presumptive nonprison category or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate. In felony cases except for violations of K.S.A. 8-1567 or 8-2,144, and amendments thereto, the court may

include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of an original probation sentence;

(4) assign the defendant to a community correctional services program as provided in K.S.A. 75-5291, and amendments thereto, or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

(5) assign the defendant to a conservation camp for a period not to exceed six months as a condition of probation followed by a six-month period of follow-up through adult intensive supervision by a community correctional services program, if the offender successfully completes the conservation camp program;

(6) assign the defendant to a house arrest program pursuant to K.S.A. 2021 Supp. 21-6609, and amendments thereto;

(7) order the defendant to attend and satisfactorily complete an alcohol or drug education or training program as provided by K.S.A. 2021 Supp. 21-6602(c), and amendments thereto;

(8) order the defendant to repay the amount of any reward paid by any crime stoppers chapter, individual, corporation or public entity that materially aided in the apprehension or conviction of the defendant; repay the amount of any costs and expenses incurred by any law enforcement agency in the apprehension of the defendant, if one of the current crimes of conviction of the defendant includes escape from custody or aggravated escape from custody, as defined in K.S.A. 2021 Supp. 21-5911, and amendments thereto; repay expenses incurred by a fire district, fire department or fire company responding to a fire that has been determined to be arson or aggravated arson as defined in K.S.A. 2021 Supp. 21-5812, and amendments thereto, if

the defendant is convicted of such crime; repay the amount of any public funds utilized by a law enforcement agency to purchase controlled substances from the defendant during the investigation that leads to the defendant's conviction; or repay the amount of any medical costs and expenses incurred by any law enforcement agency or county. Such repayment of the amount of any such costs and expenses incurred by a county, law enforcement agency, fire district, fire department or fire company or any public funds utilized by a law enforcement agency shall be deposited and credited to the same fund from which the public funds were credited to prior to use by the county, law enforcement agency, fire district, fire department or fire company;

(9) order the defendant to pay the administrative fee authorized by K.S.A. 22-4529, and amendments thereto, unless waived by the court;

(10) order the defendant to pay a domestic violence special program fee authorized by K.S.A. 20-369, and amendments thereto;

(11) if the defendant is convicted of a misdemeanor or convicted of a felony specified in K.S.A. 2021 Supp. 21-6804(i), and amendments thereto, assign the defendant to work release program, other than a program at a correctional institution under the control of the secretary of corrections as defined in K.S.A. 75-5202, and amendments thereto, provided such work release program requires such defendant to return to confinement at the end of each day in the work release program. On a second or subsequent conviction of K.S.A. 8-1567, and amendments thereto, an offender placed into a work release program shall serve the total number of hours of confinement mandated by that section;

(12) order the defendant to pay the full amount of unpaid costs associated with the conditions of release of the appearance bond under K.S.A. 22-2802, and amendments thereto;

(13) [order the defendant to participate in a specialty court program pursuant to section](#)

1, and amendments thereto;

(14) impose any appropriate combination of paragraphs (1), ~~(2), (3), (4), (5), (6), (7), (8), (9), (10), (11) and (12)~~ through (13); or

~~(14)~~(15) suspend imposition of sentence in misdemeanor cases.

(b) (1) In addition to or in lieu of any of the above, the court shall order the defendant to pay restitution, which shall include, but not be limited to, damage or loss caused by the defendant's crime. Restitution shall be due immediately unless: (A) The court orders that the defendant be given a specified time to pay or be allowed to pay in specified installments; or (B) the court finds compelling circumstances that would render restitution unworkable, either in whole or in part. In regard to a violation of K.S.A. 2021 Supp. 21-6107, and amendments thereto, such damage or loss shall include, but not be limited to, attorney fees and costs incurred to repair the credit history or rating of the person whose personal identification documents were obtained and used in violation of such section, and to satisfy a debt, lien or other obligation incurred by the person whose personal identification documents were obtained and used in violation of such section. In regard to a violation of K.S.A. 2021 Supp. 21-5801, 21-5807, 21-5813 or 21-5818, and amendments thereto, such damage or loss shall include the cost of repair or replacement of the property that was damaged, the reasonable cost of any loss of production, crops and livestock, reasonable labor costs of any kind, reasonable material costs of any kind and any reasonable costs that are attributed to equipment that is used to abate or repair the damage to the property. If the court finds restitution unworkable, either in whole or in part, the court shall state on the record in detail the reasons therefor.

(2) If the court orders restitution, the restitution shall be a judgment against the defendant that may be collected by the court by garnishment or other execution as on judgments

in civil cases. If, after 60 days from the date restitution is ordered by the court, a defendant is found to be in noncompliance with the restitution order, and the victim to whom restitution is ordered paid has not initiated proceedings in accordance with K.S.A. 60-4301 et seq., and amendments thereto, the court shall assign an agent procured by the judicial administrator pursuant to K.S.A. 20-169, and amendments thereto, to collect the restitution on behalf of the victim. The chief judge of each judicial district may assign such cases to an appropriate division of the court for the conduct of civil collection proceedings.

(3) If a restitution order entered prior to the effective date of this act does not give the defendant a specified time to pay or set payment in specified installments, the defendant may file a motion with the court prior to December 31, 2020, proposing payment of restitution in specified installments. The court may recall the restitution order from the agent assigned pursuant to K.S.A. 20-169, and amendments thereto, until the court rules on such motion. If the court does not order payment in specified installments or if the defendant does not file a motion prior to December 31, 2020, the restitution shall be due immediately.

(c) In addition to or in lieu of any of the above, the court shall order the defendant to submit to and complete an alcohol and drug evaluation, and pay a fee therefor, when required by K.S.A. 2021 Supp. 21-6602(d), and amendments thereto.

(d) In addition to any of the above, the court shall order the defendant to reimburse the county general fund for all or a part of the expenditures by the county to provide counsel and other defense services to the defendant. Any such reimbursement to the county shall be paid only after any order for restitution has been paid in full. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been

required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court that sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment.

(e) In releasing a defendant on probation, the court shall direct that the defendant be under the supervision of a court services officer. If the court commits the defendant to the custody of the secretary of corrections or to jail, the court may specify in its order the amount of restitution to be paid and the person to whom it shall be paid if restitution is later ordered as a condition of parole, conditional release or postrelease supervision.

(f) (1) When a new felony is committed while the offender is incarcerated and serving a sentence for a felony, or while the offender is on probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision for a felony, a new sentence shall be imposed consecutively pursuant to the provisions of K.S.A. 2021 Supp. 21-6606, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(2) When a new felony is committed during a period of time when the defendant would have been on probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision for a felony had the defendant not been granted release by the court pursuant to K.S.A. 2021 Supp. 21-6608(d), and amendments thereto, or the prisoner review board pursuant to K.S.A. 22-3717, and amendments thereto, the court may

sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(3) When a new felony is committed while the offender is incarcerated in a juvenile correctional facility pursuant to K.S.A. 38-1671, prior to its repeal, or K.S.A. 38-2373, and amendments thereto, for an offense, which if committed by an adult would constitute the commission of a felony, upon conviction, the court shall sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure. The conviction shall operate as a full and complete discharge from any obligations, except for an order of restitution, imposed on the offender arising from the offense for which the offender was committed to a juvenile correctional facility.

(4) When a new felony is committed while the offender is on release for a felony pursuant to the provisions of article 28 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto, or similar provisions of the laws of another jurisdiction, a new sentence may be imposed consecutively pursuant to the provisions of K.S.A. 2021 Supp. 21-6606, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(g) Prior to imposing a dispositional departure for a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes, in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of

the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, or in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, or in grid blocks 5-C, 5-D, 5-E or 5-F of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, and whose offense does not meet the requirements of K.S.A. 2021 Supp. 21-6824, and amendments thereto, prior to revocation of a nonprison sanction of a defendant whose offense is classified in grid blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, or in grid blocks 5-C, 5-D, 5-E or 5-F of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, and whose offense does not meet the requirements of K.S.A. 2021 Supp. 21-6824, and amendments thereto, or prior to revocation of a nonprison sanction of a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes, in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, or in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, the court shall consider placement of the defendant in the Labette correctional conservation camp, conservation camps established by the secretary of corrections pursuant to K.S.A. 75-52,127, and amendments thereto, or a community intermediate sanction center. Pursuant to this subsection the defendant shall not be sentenced to imprisonment if space is available in a conservation camp or community intermediate sanction center and the defendant meets all of the conservation camp's or community intermediate sanction center's placement criteria unless the court states on the record the reasons for not placing the defendant in a

conservation camp or community intermediate sanction center.

(h) In committing a defendant to the custody of the secretary of corrections, the court shall fix a term of confinement within the limits provided by law. In those cases where the law does not fix a term of confinement for the crime for which the defendant was convicted, the court shall fix the term of such confinement.

(i) In addition to any of the above, the court shall order the defendant to reimburse the state general fund for all or part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court that sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment. The amount of attorney fees to be included in the court order for reimbursement shall be the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less.

(j) This section shall not deprive the court of any authority conferred by any other Kansas statute to decree a forfeiture of property, suspend or cancel a license, remove a person from office or impose any other civil penalty as a result of conviction of crime.

(k) An application for or acceptance of probation or assignment to a community

correctional services program shall not constitute an acquiescence in the judgment for purpose of appeal, and any convicted person may appeal from such conviction, as provided by law, without regard to whether such person has applied for probation, suspended sentence or assignment to a community correctional services program.

(1) The secretary of corrections is authorized to make direct placement to the Labette correctional conservation camp or a conservation camp established by the secretary pursuant to K.S.A. 75-52,127, and amendments thereto, of an inmate sentenced to the secretary's custody if the inmate:

(1) Has been sentenced to the secretary for a probation revocation, as a departure from the presumptive nonimprisonment grid block of either sentencing grid, for an offense that is classified in grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes, in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, or for an offense that is classified in grid blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, or in grid blocks 5-C, 5-D, 5-E or 5-F of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, and such offense does not meet the requirements of K.S.A. 2021 Supp. 21-6824, and amendments thereto; and

(2) otherwise meets admission criteria of the camp.

If the inmate successfully completes a conservation camp program, the secretary of corrections shall report such completion to the sentencing court and the county or district attorney. The inmate shall then be assigned by the court to six months of follow-up supervision conducted by the appropriate community corrections services program. The court may also order

that supervision continue thereafter for the length of time authorized by K.S.A. 2021 Supp. 21-6608, and amendments thereto.

(m) When it is provided by law that a person shall be sentenced pursuant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions of this section shall not apply.

(n) (1) Except as provided by K.S.A. 2021 Supp. 21-6630 and 21-6805(f), and amendments thereto, in addition to any of the above, for felony violations of K.S.A. 2021 Supp. 21-5706, and amendments thereto, the court shall require the defendant who meets the requirements established in K.S.A. 2021 Supp. 21-6824, and amendments thereto, to participate in a certified drug abuse treatment program, as provided in K.S.A. 75-52,144, and amendments thereto, including, but not limited to, an approved after-care plan. The amount of time spent participating in such program shall not be credited as service on the underlying prison sentence.

(2) If the defendant fails to participate in or has a pattern of intentional conduct that demonstrates the defendant's refusal to comply with or participate in the treatment program, as established by judicial finding, the defendant shall be subject to sanction or revocation pursuant to the provisions of K.S.A. 22-3716, and amendments thereto. If the defendant's probation is revoked, the defendant shall serve the underlying prison sentence as established in K.S.A. 2021 Supp. 21-6805, and amendments thereto.

(A) Except as provided in subsection (n)(2)(B), for those offenders who are convicted on or after July 1, 2003, but prior to July 1, 2013, upon completion of the underlying prison sentence, the offender shall not be subject to a period of postrelease supervision.

(B) Offenders whose crime of conviction was committed on or after July 1, 2013, and whose probation is revoked pursuant to K.S.A. 22-3716(c), and amendments thereto, or whose underlying prison term expires while serving a sanction pursuant to K.S.A. 22-3716(c)(1), and

amendments thereto, shall serve a period of postrelease supervision upon the completion of the underlying prison term.

(o) (1) Except as provided in paragraph (3), in addition to any other penalty or disposition imposed by law, upon a conviction for unlawful possession of a controlled substance or controlled substance analog in violation of K.S.A. 2021 Supp. 21-5706, and amendments thereto, in which the trier of fact makes a finding that the unlawful possession occurred while transporting the controlled substance or controlled substance analog in any vehicle upon a highway or street, the offender's driver's license or privilege to operate a motor vehicle on the streets and highways of this state shall be suspended for one year.

(2) Upon suspension of a license pursuant to this subsection, the court shall require the person to surrender the license to the court, which shall transmit the license to the division of motor vehicles of the department of revenue, to be retained until the period of suspension expires. At that time, the licensee may apply to the division for return of the license. If the license has expired, the person may apply for a new license, which shall be issued promptly upon payment of the proper fee and satisfaction of other conditions established by law for obtaining a license unless another suspension or revocation of the person's privilege to operate a motor vehicle is in effect.

(3) (A) In lieu of suspending the driver's license or privilege to operate a motor vehicle on the highways of this state of any person as provided in paragraph (1), the judge of the court in which such person was convicted may enter an order that places conditions on such person's privilege of operating a motor vehicle on the highways of this state, a certified copy of which such person shall be required to carry any time such person is operating a motor vehicle on the highways of this state. Any such order shall prescribe the duration of the conditions imposed,

which in no event shall be for a period of more than one year.

(B) Upon entering an order restricting a person's license hereunder, the judge shall require such person to surrender such person's driver's license to the judge who shall cause it to be transmitted to the division of vehicles, together with a copy of the order. Upon receipt thereof, the division of vehicles shall issue without charge a driver's license, which shall indicate on its face that conditions have been imposed on such person's privilege of operating a motor vehicle and that a certified copy of the order imposing such conditions is required to be carried by the person for whom the license was issued any time such person is operating a motor vehicle on the highways of this state. If the person convicted is a nonresident, the judge shall cause a copy of the order to be transmitted to the division and the division shall forward a copy of it to the motor vehicle administrator of such person's state of residence. Such judge shall furnish to any person whose driver's license has had conditions imposed on it under this paragraph a copy of the order, which shall be recognized as a valid Kansas driver's license until such time as the division shall issue the restricted license provided for in this paragraph.

(C) Upon expiration of the period of time for which conditions are imposed pursuant to this subsection, the licensee may apply to the division for the return of the license previously surrendered by such licensee. In the event such license has expired, such person may apply to the division for a new license, which shall be issued immediately by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless such person's privilege to operate a motor vehicle on the highways of this state has been suspended or revoked prior thereto. If any person shall violate any of the conditions imposed under this paragraph, such person's driver's license or privilege to operate a motor vehicle on the highways of this state shall be revoked for a period of not less than 60 days nor more than one year by the judge of the court

in which such person is convicted of violating such conditions.

(4) As used in this subsection, "highway" and "street" mean the same as in K.S.A. 8-1424 and 8-1473, and amendments thereto.

(p) In addition to any of the above, for any criminal offense that includes the domestic violence designation pursuant to K.S.A. 2021 Supp. 22-4616, and amendments thereto, the court shall require the defendant to: (1) Undergo a domestic violence offender assessment conducted by a certified batterer intervention program; and (2) follow all recommendations made by such program, unless otherwise ordered by the court or the department of corrections. The court may order a domestic violence offender assessment and any other evaluation prior to sentencing if the assessment or evaluation would assist the court in determining an appropriate sentence. The entity completing the assessment or evaluation shall provide the assessment or evaluation and recommendations to the court and the court shall provide the domestic violence offender assessment to any entity responsible for supervising such defendant. A defendant ordered to undergo a domestic violence offender assessment shall be required to pay for the assessment and, unless otherwise ordered by the court or the department of corrections, for completion of all recommendations.

(q) In imposing a fine, the court may authorize the payment thereof in installments. In lieu of payment of any fine imposed, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed by the later of one year after the fine is imposed or one year after release from imprisonment or jail, or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of

community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance shall become due on that date. If conditional reduction of any fine is rescinded by the court for any reason, then pursuant to the court's order the person may be ordered to perform community service by one year after the date of such rescission or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date. All credits for community service shall be subject to review and approval by the court.

(r) In addition to any other penalty or disposition imposed by law, for any defendant sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2021 Supp. 21-6627, and amendments thereto, for crimes committed on or after July 1, 2006, the court shall order that the defendant be electronically monitored upon release from imprisonment for the duration of the defendant's natural life and that the defendant shall reimburse the state for all or part of the cost of such monitoring as determined by the prisoner review board.

(s) Whenever the court has released the defendant on probation pursuant to subsection (a)(3), the defendant's supervising court services officer, with the concurrence of the chief court services officer, may impose the violation sanctions as provided in K.S.A. 22-3716(c)(1)(B), and amendments thereto, without further order of the court, unless the defendant, after being apprised of the right to a revocation hearing before the court pursuant to K.S.A. 22-3716(b), and amendments thereto, refuses to waive such right.

(t) Whenever the court has assigned the defendant to a community correctional services program pursuant to subsection (a)(4), the defendant's community corrections officer, with the concurrence of the community corrections director, may impose the violation sanctions as

provided in K.S.A. 22-3716(c)(1)(B), and amendments thereto, without further order of the court unless the defendant, after being apprised of the right to a revocation hearing before the court pursuant to K.S.A. 22-3716(b), and amendments thereto, refuses to waive such right.

(u) In addition to any of the above, the court shall authorize an additional 18 days of confinement in a county jail to be reserved for sanctions as set forth in K.S.A. 22-3716(b)(3)(B), (b)(4) or (c)(1)(B), and amendments thereto.

(v) The amendments made to this section by ~~this act~~ [section 1 of chapter 9 of the 2020 Session Laws of Kansas](#) are procedural in nature and shall be construed and applied retroactively.

Sec. 3. K.S.A. 2021 Supp. 21-6614 is hereby amended to read as follows: 21-6614. (a) (1) Except as provided in subsections (b), (c), (d), (e) and (f), any person convicted in this state of a traffic infraction, cigarette or tobacco infraction, misdemeanor or a class D or E felony, or for crimes committed on or after July 1, 1993, any nongrid felony or felony ranked in severity levels 6 through 10 of the nondrug grid, or for crimes committed on or after July 1, 1993, but prior to July 1, 2012, any felony ranked in severity level 4 of the drug grid, or for crimes committed on or after July 1, 2012, any felony ranked in severity level 5 of the drug grid may petition the convicting court for the expungement of such conviction or related arrest records if three or more years have elapsed since the person: (A) Satisfied the sentence imposed; or (B) was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence.

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

the terms of the diversion agreement were fulfilled.

(3) Notwithstanding the provisions of subsection (a)(1), and except as provided in subsections (b), (c), (d), (e) and (f), any person who has completed the requirements of a specialty court program established pursuant to section 1, and amendments thereto, may petition the district court for the expungement of the conviction and related arrest records. The court may waive all or part of the docket fee imposed for filing a petition pursuant to this subsection.

(b) Any person convicted of prostitution, as defined in K.S.A. 21-3512, prior to its repeal, convicted of a violation of K.S.A. 2021 Supp. 21-6419, and amendments thereto, or who entered into a diversion agreement in lieu of further criminal proceedings for such violation, may petition the convicting court for the expungement of such conviction or diversion agreement and related arrest records if:

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

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

(c) Except as provided in subsections (e) and (f), no person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, a community

correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a class A, B or C felony, or for crimes committed on or after July 1, 1993, if convicted of an off-grid felony or any felony ranked in severity levels 1 through 5 of the nondrug grid, or for crimes committed on or after July 1, 1993, but prior to July 1, 2012, any felony ranked in severity levels 1 through 3 of the drug grid, or for crimes committed on or after July 1, 2012, any felony ranked in severity levels 1 through 4 of the drug grid, or:

(1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its repeal, or K.S.A. 2021 Supp. 21-5406, and amendments thereto, or as prohibited by any law of another state that is in substantial conformity with that statute;

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

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

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

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

(6) failing to stop at the scene of an accident and perform the duties required by K.S.A.

8-1603, prior to its repeal, or K.S.A. 8-1602 or 8-1604, and amendments thereto, or required by a law of another state that is in substantial conformity with those statutes;

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

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

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

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

(3) Except as provided further, the provisions of this subsection shall apply to all violations committed on or after July 1, 2006. The provisions of subsection (d)(2) shall not apply to violations committed on or after July 1, 2014, but prior to July 1, 2015.

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

(1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2021 Supp. 21-5503, and amendments thereto;

(2) indecent liberties with a child or aggravated indecent liberties with a child, as

defined in K.S.A. 21-3503 or 21-3504, prior to their repeal, or K.S.A. 2021 Supp. 21-5506, and amendments thereto;

(3) criminal sodomy, as defined in K.S.A. 21-3505(a)(2) or (a)(3), prior to its repeal, or K.S.A. 2021 Supp. 21-5504(a)(3) or (a)(4), and amendments thereto;

(4) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior to its repeal, or K.S.A. 2021 Supp. 21-5504, and amendments thereto;

(5) indecent solicitation of a child or aggravated indecent solicitation of a child, as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal, or K.S.A. 2021 Supp. 21-5508, and amendments thereto;

(6) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2021 Supp. 21-5510, and amendments thereto;

(7) internet trading in child pornography or aggravated internet trading in child pornography, as defined in K.S.A. 2021 Supp. 21-5514, and amendments thereto;

(8) aggravated incest, as defined in K.S.A. 21-3603, prior to its repeal, or K.S.A. 2021 Supp. 21-5604, and amendments thereto;

(9) endangering a child or aggravated endangering a child, as defined in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2021 Supp. 21-5601, and amendments thereto;

(10) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal, or K.S.A. 2021 Supp. 21-5602, and amendments thereto;

(11) capital murder, as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 2021 Supp. 21-5401, and amendments thereto;

(12) murder in the first degree, as defined in K.S.A. 21-3401, prior to its repeal, or K.S.A. 2021 Supp. 21-5402, and amendments thereto;

(13) murder in the second degree, as defined in K.S.A. 21-3402, prior to its repeal, or K.S.A. 2021 Supp. 21-5403, and amendments thereto;

(14) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to its repeal, or K.S.A. 2021 Supp. 21-5404, and amendments thereto;

(15) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to its repeal, or K.S.A. 2021 Supp. 21-5405, and amendments thereto;

(16) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal, or K.S.A. 2021 Supp. 21-5505, and amendments thereto, when the victim was less than 18 years of age at the time the crime was committed;

(17) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to its repeal, or K.S.A. 2021 Supp. 21-5505, and amendments thereto;

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

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

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

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

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

(2) Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$176. On and after July 1, 2019, through June 30, 2025, the supreme court may impose a charge, not to exceed \$19 per case, to fund the costs of non-judicial personnel. The charge established in this section shall be the only fee collected or moneys in the nature of a fee collected for the case. Such charge shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee.

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

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

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

petitioner if the petition is filed under subsection (a)(1) or (a)(2); or

(B) no proceeding involving a felony is presently pending or being instituted against the petitioner if the petition is filed under subsection (a)(3);

- (2) the circumstances and behavior of the petitioner warrant the expungement;
- (3) the expungement is consistent with the public welfare; and
- (4) with respect to petitions seeking expungement of a felony conviction, possession of a firearm by the petitioner is not likely to pose a threat to the safety of the public.

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

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

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

(A) In any application for licensure as a private detective, private detective agency, certification as a firearms trainer pursuant to K.S.A. 75-7b21, and amendments thereto, or

employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the Kansas department for aging and disability services;

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

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

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

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

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

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

(H) to aid in determining the petitioner's qualifications to be an employee of a tribal

gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

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

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

(K) to aid in determining the petitioner's qualifications for a license to act as a bail enforcement agent pursuant to K.S.A. 75-7e01 through 75-7e09, and amendments thereto, and K.S.A. 2021 Supp. 50-6,141, and amendments thereto;

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

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

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

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

(k) (1) Subject to the disclosures required pursuant to subsection (i), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person

whose arrest records, conviction or diversion of a crime has been expunged under this statute may state that such person has never been arrested, convicted or diverted of such crime.

(2) A person whose arrest record, conviction or diversion of a crime that resulted in such person being prohibited by state or federal law from possessing a firearm has been expunged under this statute shall be deemed to have had such person's right to keep and bear arms fully restored. This restoration of rights shall include, but not be limited to, the right to use, transport, receive, purchase, transfer and possess firearms. The provisions of this paragraph shall apply to all orders of expungement, including any orders issued prior to July 1, 2021.

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

(1) The person whose record was expunged;

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

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

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

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

order;

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

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

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

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

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

(A) Lottery gaming facility managers and prospective managers, racetrack gaming

facility managers and prospective managers, licensees and certificate holders; and

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

(11) the Kansas sentencing commission;

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

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

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

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

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

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

(16) (A) the attorney general and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to act as a bail enforcement agent pursuant to K.S.A. 75-7e01 through 75-7e09, and amendments thereto, and

K.S.A. 2021 Supp. 50-6,141, and amendments thereto; or

(B) the attorney general for any other purpose authorized by law, except that an expungement record shall not be the basis for denial of a license to carry a concealed handgun under the personal and family protection act; or

(17) the Kansas bureau of investigation, for the purpose of completing a person's criminal history record information within the central repository, in accordance with K.S.A. 22-4701 et seq., and amendments thereto.

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

(2) Upon the issuance of an order of expungement that resulted in the restoration of a person's right to keep and bear arms, the Kansas bureau of investigation shall report to the federal bureau of investigation that such expunged record be withdrawn from the national instant criminal background check system. The Kansas bureau of investigation shall include such order of expungement in the person's criminal history record for purposes of documenting the restoration of such person's right to keep and bear arms.

Sec. 4. K.S.A. 2021 Supp. 21-6604 and 21-6614 are hereby repealed.

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