

HOUSE BILL No. 2602

Committee on Corrections and Juvenile Justice

Requested by Marilyn Harp as a Citizen Lobbyist

1-25

1 AN ACT concerning children and minors; relating to the revised Kansas
2 juvenile justice code; authorizing expungement of an adjudication if the
3 person has not been convicted or adjudicated of an offense in the past
4 two years; amending K.S.A. 38-2312 and repealing the existing
5 section.
6

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

8 Section 1. K.S.A. 38-2312 is hereby amended to read as follows: 38-
9 2312. (a) Except as provided in subsections (b) and (c), any records or files
10 specified in this code concerning a juvenile may be expunged upon
11 application to a judge of the court of the county in which the records or
12 files are maintained. The application for expungement may be made by the
13 juvenile, if 18 years of age or older or, if the juvenile is less than 18 years
14 of age, by the juvenile's parent or next friend.

15 (b) There shall be no expungement of records or files concerning acts
16 committed by a juvenile which, if committed by an adult, would constitute
17 a violation of K.S.A. 21-3401, prior to its repeal, or K.S.A. 21-5402, and
18 amendments thereto, murder in the first degree; K.S.A. 21-3402, prior to
19 its repeal, or K.S.A. 21-5403, and amendments thereto, murder in the
20 second degree; K.S.A. 21-3403, prior to its repeal, or K.S.A. 21-5404, and
21 amendments thereto, voluntary manslaughter; K.S.A. 21-3404, prior to its
22 repeal, or K.S.A. 21-5405, and amendments thereto, involuntary
23 manslaughter; K.S.A. 21-3439, prior to its repeal, or K.S.A. 21-5401, and
24 amendments thereto, capital murder; K.S.A. 21-3442, prior to its repeal, or
25 K.S.A. 21-5405(a)(3) or (a)(5), and amendments thereto, involuntary
26 manslaughter while driving under the influence of alcohol or drugs; K.S.A.
27 21-3502, prior to its repeal, or K.S.A. 21-5503, and amendments thereto,
28 rape; K.S.A. 21-3503, prior to its repeal, or K.S.A. 21-5506(a), and
29 amendments thereto, indecent liberties with a child; K.S.A. 21-3504, prior
30 to its repeal, or K.S.A. 21-5506(b), and amendments thereto, aggravated
31 indecent liberties with a child; K.S.A. 21-3506, prior to its repeal, or
32 K.S.A. 21-5504(b), and amendments thereto, aggravated criminal sodomy;
33 K.S.A. 21-3510, prior to its repeal, or K.S.A. 21-5508(a), and amendments
34 thereto, indecent solicitation of a child; K.S.A. 21-3511, prior to its repeal,
35 or K.S.A. 21-5508(b), and amendments thereto, aggravated indecent

1 solicitation of a child; K.S.A. 21-3516, prior to its repeal, or K.S.A. 21-
2 5510, and amendments thereto, sexual exploitation of a child; K.S.A. 21-
3 5514(a), and amendments thereto, internet trading in child pornography;
4 K.S.A. 21-5514(b), and amendments thereto, aggravated internet trading in
5 child pornography; K.S.A. 21-3603, prior to its repeal, or K.S.A. 21-
6 5604(b), and amendments thereto, aggravated incest; K.S.A. 21-3608,
7 prior to its repeal, or K.S.A. 21-5601(a), and amendments thereto,
8 endangering a child; K.S.A. 21-3609, prior to its repeal, or K.S.A. 21-
9 5602, and amendments thereto, abuse of a child; or which would constitute
10 an attempt to commit a violation of any of the offenses specified in this
11 subsection.

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

18 (d) When a petition for expungement is filed, the court shall set a date
19 for a hearing on the petition and shall give notice thereof to the county or
20 district attorney. The petition shall state: (1) The juvenile's full name; (2)
21 the full name of the juvenile as reflected in the court record, if different
22 than (1); (3) the juvenile's sex and date of birth; (4) the offense for which
23 the juvenile was adjudicated; (5) the date of the trial; and (6) the identity
24 of the trial court. Except as otherwise provided by law, a petition for
25 expungement shall be accompanied by a docket fee in the amount of \$176.
26 On and after July 1, 2019, through June 30, 2025, the supreme court may
27 impose a charge, not to exceed \$19 per case, to fund the costs of non-
28 judicial personnel. All petitions for expungement shall be docketed in the
29 original action. Any person who may have relevant information about the
30 petitioner may testify at the hearing. The court may inquire into the
31 background of the petitioner.

32 (e) (1) After hearing, the court shall order the expungement of the
33 records and files if the court finds that:

34 (A) (i) The juvenile has reached 23 years of age or that two years
35 have elapsed since the final discharge;

36 (ii) one year has elapsed since the final discharge for an adjudication
37 concerning acts committed by a juvenile which, if committed by an adult,
38 would constitute a violation of K.S.A. 21-6419, and amendments thereto;
39 or

40 (iii) the juvenile is a victim of human trafficking, aggravated human
41 trafficking or commercial sexual exploitation of a child, the adjudication
42 concerned acts committed by the juvenile as a result of such victimization,
43 including, but not limited to, acts which, if committed by an adult, would

1 constitute a violation of K.S.A. 21-6203 or 21-6419, and amendments
2 thereto, and the hearing on expungement occurred on or after the date of
3 final discharge. The provisions of this clause shall not allow an
4 expungement of records or files concerning acts described in subsection
5 (b);

6 (B) since the final discharge of the juvenile, the juvenile has not been
7 convicted of a felony or of a misdemeanor other than a traffic offense *in*
8 *the past two years* or adjudicated as a juvenile offender under the revised
9 Kansas juvenile justice code *in the past two years* and no proceedings are
10 pending seeking such a conviction or adjudication; and

11 (C) the circumstances and behavior of the petitioner warrant
12 expungement.

13 (2) The court may require that all court costs, fees and restitution
14 shall be paid.

15 (f) Upon entry of an order expunging records or files, the offense
16 which the records or files concern shall be treated as if it never occurred,
17 except that upon conviction of a crime or adjudication in a subsequent
18 action under this code the offense may be considered in determining the
19 sentence to be imposed. The petitioner, the court and all law enforcement
20 officers and other public offices and agencies shall properly reply on
21 inquiry that no record or file exists with respect to the juvenile. Inspection
22 of the expunged files or records thereafter may be permitted by order of
23 the court upon petition by the person who is the subject thereof. The
24 inspection shall be limited to inspection by the person who is the subject of
25 the files or records and the person's designees.

26 (g) A certified copy of any order made pursuant to subsection (a) or
27 (d) shall be sent to the Kansas bureau of investigation, which shall notify
28 every juvenile or criminal justice agency which may possess records or
29 files ordered to be expunged. If the agency fails to comply with the order
30 within a reasonable time after its receipt, such agency may be adjudged in
31 contempt of court and punished accordingly.

32 (h) The court shall inform any juvenile who has been adjudicated a
33 juvenile offender of the provisions of this section.

34 (i) Nothing in this section shall be construed to prohibit the
35 maintenance of information relating to an offense after records or files
36 concerning the offense have been expunged if the information is kept in a
37 manner that does not enable identification of the juvenile.

38 (j) Nothing in this section shall be construed to permit or require
39 expungement of files or records related to a child support order registered
40 pursuant to the revised Kansas juvenile justice code.

41 (k) Whenever the records or files of any adjudication have been
42 expunged under the provisions of this section, the custodian of the records
43 or files of adjudication relating to that offense shall not disclose the

1 existence of such records or files, except when requested by:

2 (1) The person whose record was expunged;

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

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

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

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

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

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

28 (8) the Kansas sentencing commission; or

29 (9) the Kansas bureau of investigation, for the purposes of:

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

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

36 (l) The provisions of subsection (k)(9) shall apply to all records
37 created prior to, on and after July 1, 2011.

38 Sec. 2. K.S.A. 38-2312 is hereby repealed.

39 Sec. 3. This act shall take effect and be in force from and after its
40 publication in the statute book.