

HOUSE BILL No. 2329

By Committee on Corrections and Juvenile Justice

2-11

1 AN ACT concerning courts; relating to expunged records; relating to
2 petitions for relief; amending K.S.A. 22-4701 and 22-4705 and K.S.A.
3 2010 Supp. 12-4516a, 22-2410 and 38-2312 and section 254 of
4 chapter 136 or the 2010 Session Laws of Kansas repealing the existing
5 sections.

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

8 New Section 1. (a) An individual who has been adjudicated as a
9 mentally ill person subject to involuntary commitment for care and
10 treatment, may petition for relief of disabilities for the purpose of firearm
11 prohibitions imposed under state and federal laws.

12 (b) A petitioner shall submit such petition to a court of competent
13 jurisdiction within this state.

14 (c) The court may only consider petitions for relief due to mental
15 health adjudications or commitments that occurred within the state.

16 (d) The court shall consider the petition for relief, in accordance
17 with the principles of due process. Such petitioner shall submit, and such
18 court shall receive and consider:

19 (1) The circumstances regarding the firearm disability imposed by
20 federal law;

21 (2) such petitioner's mental health records;

22 (3) such petitioner's criminal history records; and

23 (4) such petitioner's reputation, developed through character witness
24 statements, testimony or other character evidence.

25 (e) The court shall grant relief only if such court determines that:

26 (1) The petitioner will not be likely to act in a manner dangerous to
27 public safety; and

28 (2) granting such relief would not be contrary to the public interest.

29 (f) (1) If the court denies the petition for relief, the petitioner may
30 petition a court of proper jurisdiction for a de novo judicial review of the
31 court's decision to deny such petition.

32 (2) The reviewing court may give deference to the decision of the
33 court denying such relief.

34 (g) Documentation of a granted petition shall be submitted to the
35 Kansas bureau of investigation. The Kansas bureau of investigation shall
36 immediately cause such order to be entered into the appropriate state and

1 federal databases.

2 (h) As used in this section:

3 (1) "Mentally ill person subject to involuntary commitment for care
4 and treatment" has the same meaning as defined in K.S.A. 59-2946, and
5 amendments thereto.

6 (2) "Due process" requires that:

7 (A) The petitioner shall have the opportunity to submit such
8 petitioner's own evidence to the court;

9 (B) an independent decision maker, other than the individual who
10 gathered the evidence for the court acting on the application, shall review
11 such evidence; and

12 (C) a record of the proceedings shall be created and maintained for
13 review.

14 Sec. 2. K.S.A. 2010 Supp. 12-4516a is hereby amended to read as
15 follows: 12-4516a. (a) Any person who has been arrested on a violation
16 of a city ordinance of this state may petition the court for the
17 expungement of such arrest record.

18 (b) When a petition for expungement is filed, the court shall set a
19 date for hearing on such petition and shall cause notice of such hearing to
20 be given to the prosecuting attorney and the arresting law enforcement
21 agency. When a petition for expungement is filed, the official court file
22 shall be separated from the other records of the court, and shall be
23 disclosed only to a judge of the court and members of the staff of the
24 court designated by a judge of the district court, the prosecuting attorney,
25 the arresting law enforcement agency, or any other person when
26 authorized by a court order, subject to any conditions imposed by the
27 order. The petition shall state: (1) The petitioner's full name;

28 (2) the full name of the petitioner at the time of arrest, if different
29 than the petitioner's current name;

30 (3) the petitioner's sex, race and date of birth;

31 (4) the crime for which the petitioner was arrested;

32 (5) the date of the petitioner's arrest; and

33 (6) the identity of the arresting law enforcement agency.

34 A municipal court may prescribe a fee to be charged as costs for a
35 person petitioning for an order of expungement pursuant to this section,
36 except that no fee shall be charged to a person who was arrested as a
37 result of being a victim of identity theft under K.S.A. 21-4018, and
38 amendments thereto. Any person who may have relevant information
39 about the petitioner may testify at the hearing. The court may inquire into
40 the background of the petitioner.

41 (c) At the hearing on a petition for expungement, the court shall
42 order the arrest record and subsequent court proceedings, if any,
43 expunged upon finding:

- 1 (1) The arrest occurred because of mistaken identity;
- 2 (2) a court has found that there was no probable cause for the arrest;
- 3 (3) the petitioner was found not guilty in court proceedings; or
- 4 (4) the expungement would be in the best interests of justice and (A)
- 5 charges have been dismissed; or (B) no charges have been or are likely to
- 6 be filed.

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

16 (e) If the ground for expungement is as provided in subsection (c)
17 (4), the court shall determine whether, in the interest of public welfare,
18 the records should be available for any of the following purposes:

19 (1) In any application for employment as a detective with a private
20 detective agency, as defined by K.S.A. 75-7b01, and amendments thereto;
21 as security personnel with a private patrol operator, as defined by K.S.A.
22 75-7b01, and amendments thereto; or with an institution, as defined in
23 K.S.A. 76-12a01, and amendments thereto, of the department of social
24 and rehabilitation services;

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

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

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

37 (5) in any application for a commercial driver's license under K.S.A.
38 8-2,125 through 8-2,142, and amendments thereto;

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

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

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

2 (f) *The court shall make all expunged records and related*
3 *information in such court's possession, created prior to and after July 1,*
4 *2011, available to the Kansas bureau of investigation for the purposes of:*

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

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

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

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

23 Sec. 3. K.S.A. 2010 Supp. 22-2410 is hereby amended to read as
24 follows: 22-2410. (a) Any person who has been arrested in this state may
25 petition the district court for the expungement of such arrest record.

26 (b) When a petition for expungement is filed, the court shall set a
27 date for hearing on such petition and shall cause notice of such hearing to
28 be given to the prosecuting attorney and the arresting law enforcement
29 agency. When a petition for expungement is filed, the official court file
30 shall be separated from the other records of the court, and shall be
31 disclosed only to a judge of the court and members of the staff of the
32 court designated by a judge of the district court, the prosecuting attorney,
33 the arresting law enforcement agency, or any other person when
34 authorized by a court order, subject to any conditions imposed by the
35 order. Except as otherwise provided by law, a petition for expungement
36 shall be accompanied by a docket fee in the amount of \$100. Except as
37 provided further, the docket fee established in this section shall be the
38 only fee collected or moneys in the nature of a fee collected for the
39 docket fee. Such fee shall only be established by an act of the legislature
40 and no other authority is established by law or otherwise to collect a fee.
41 On and after the effective date of this act through June 30, 2011, the
42 supreme court may impose an additional charge, not to exceed \$15 per
43 docket fee, to fund the costs of nonjudicial personnel. The petition shall

1 state:

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

9 No surcharge or fee shall be imposed to any person filing a petition
10 pursuant to this section, who was arrested as a result of being a victim of
11 identity theft under K.S.A. 21-4018, and amendments thereto. Any person
12 who may have relevant information about the petitioner may testify at the
13 hearing. The court may inquire into the background of the petitioner.

14 (c) At the hearing on a petition for expungement, the court shall
15 order the arrest record and subsequent court proceedings, if any,
16 expunged upon finding:

- 17 (1) The arrest occurred because of mistaken identity;
- 18 (2) a court has found that there was no probable cause for the arrest;
- 19 (3) the petitioner was found not guilty in court proceedings; or
- 20 (4) the expungement would be in the best interests of justice and (A)
21 charges have been dismissed; or (B) no charges have been or are likely to
22 be filed.

23 (d) When the court has ordered expungement of an arrest record and
24 subsequent court proceedings, if any, the order shall state the information
25 required to be stated in the petition and shall state the grounds for
26 expungement under subsection (c). The clerk of the court shall send a
27 certified copy of the order to the Kansas bureau of investigation which
28 shall notify the federal bureau of investigation, the secretary of
29 corrections and any other criminal justice agency which may have a
30 record of the arrest. If an order of expungement is entered, the petitioner
31 shall be treated as not having been arrested.

32 (e) If the ground for expungement is as provided in subsection (c)
33 (4), the court shall determine whether, in the interests of public welfare,
34 the records should be available for any of the following purposes:

35 (1) In any application for employment as a detective with a private
36 detective agency, as defined in K.S.A. 75-7b01, and amendments thereto;
37 as security personnel with a private patrol operator, as defined by K.S.A.
38 75-7b01, and amendments thereto; or with an institution, as defined in
39 K.S.A. 76-12a01, and amendments thereto, of the department of social
40 and rehabilitation services;

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

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

1 employment with the Kansas lottery or for work in sensitive areas within
2 the Kansas lottery as deemed appropriate by the executive director of the
3 Kansas lottery;

4 (4) to aid in determining the petitioner's qualifications for executive
5 director of the Kansas racing commission, for employment with the
6 commission or for work in sensitive areas in parimutuel racing as deemed
7 appropriate by the executive director of the commission, or to aid in
8 determining qualifications for licensure or renewal of licensure by the
9 commission;

10 (5) in any application for a commercial driver's license under K.S.A.
11 8-2,125 through 8-2,142, and amendments thereto;

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

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

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

18 (f) *The court shall make all expunged records and related*
19 *information in such court's possession, created prior to and after July 1,*
20 *2011, available to the Kansas bureau of investigation for the purposes of:*

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

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

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

33 ~~(g)~~(h) Whenever a petitioner's arrest records have been expunged as
34 provided in this section, the custodian of the records of arrest,
35 incarceration due to arrest or court proceedings related to the arrest, shall
36 not disclose the arrest or any information related to the arrest, except as
37 directed by the order of expungement or when requested by the person
38 whose arrest record was expunged.

39 ~~(h)~~(i) The docket fee collected at the time the petition for
40 expungement is filed shall be disbursed in accordance with K.S.A. 20-
41 362, and amendments thereto.

42 Sec. 4. K.S.A. 22-4701 is hereby amended to read as follows: 22-
43 4701. As used in this act, unless the context clearly requires otherwise:

1 (a) "Central repository" means the criminal justice information
2 system central repository created by this act and the juvenile offender
3 information system created pursuant to K.S.A. ~~20072010~~ Supp. 38-2326,
4 and amendments thereto.

5 (b) "Criminal history record information" means *all* data initiated or
6 collected by a criminal justice agency on a person pertaining to a
7 reportable event, *and any supporting documentation*. ~~The term~~ *Criminal*
8 *history record information* does not include:

9 (1) Data contained in intelligence or investigatory files or police
10 work-product records used solely for police investigation purposes;

11 (2) wanted posters, police blotter entries, court records of public
12 judicial proceedings or published court opinions;

13 (3) data pertaining to violations of the traffic laws of the state or any
14 other traffic law or ordinance, other than vehicular homicide; or

15 (4) presentence investigation and other reports prepared for use by a
16 court in the exercise of criminal jurisdiction or by the governor in the
17 exercise of the power of pardon, reprieve or commutation.

18 (c) "Criminal justice agency" means any government agency or
19 subdivision of any such agency which is authorized by law to exercise the
20 power of arrest, detention, prosecution, adjudication, correctional
21 supervision, rehabilitation or release of persons suspected, charged or
22 convicted of a crime and which allocates a substantial portion of its
23 annual budget to any of these functions. The term includes, but is not
24 limited to, the following agencies, when exercising jurisdiction over
25 criminal matters or criminal history record information:

26 (1) State, county, municipal and railroad police departments,
27 sheriffs' offices and countywide law enforcement agencies, correctional
28 facilities, jails and detention centers;

29 (2) the offices of the attorney general, county or district attorneys
30 and any other office in which are located persons authorized by law to
31 prosecute persons accused of criminal offenses;

32 (3) the district courts, the court of appeals, the supreme court, the
33 municipal courts and the offices of the clerks of these courts;

34 (4) the Kansas sentencing commission;

35 (5) the Kansas parole board; and

36 (6) the juvenile justice authority.

37 (d) "Criminal justice information system" means the equipment
38 (including computer hardware and software), facilities, procedures,
39 agreements and personnel used in the collection, processing, preservation
40 and dissemination of criminal history record information.

41 (e) "Director" means the director of the Kansas bureau of
42 investigation.

43 (f) "Disseminate" means to transmit criminal history record

1 information in any oral or written form. The term does not include:

2 (1) The transmittal of such information within a criminal justice
3 agency;

4 (2) the reporting of such information as required by this act; or

5 (3) the transmittal of such information between criminal justice
6 agencies in order to permit the initiation of subsequent criminal justice
7 proceedings against a person relating to the same offense.

8 (g) "Reportable event" means an event specified or provided for in
9 K.S.A. 22-4705, and amendments thereto.

10 Sec. 5. K.S.A. 22-4705 is hereby amended to read as follows: 22-
11 4705. (a) The following events are reportable events under this act:

12 (1) Issuance of an arrest warrant;

13 (2) an arrest;

14 (3) release of a person after arrest without the filing of a charge;

15 (4) dismissal or quashing of an indictment or criminal information;

16 (5) an acquittal, conviction or other disposition at or following trial,
17 including a finding of probation before judgment;

18 (6) imposition of a sentence;

19 (7) commitment to a correctional facility, whether state or locally
20 operated;

21 (8) release from detention or confinement;

22 (9) an escape from confinement;

23 (10) a pardon, reprieve, commutation of sentence or other change in
24 a sentence, including a change ordered by a court;

25 (11) judgment of an appellate court that modifies or reverses the
26 lower court decision;

27 (12) order of a court in a collateral proceeding that affects a person's
28 conviction, sentence or confinement, including any expungement or
29 annulment of arrests or convictions pursuant to state statute; and

30 (13) any other event arising out of or occurring during the course of
31 criminal justice proceedings declared to be reportable by rule or
32 regulation of the director.

33 (b) There is hereby established a criminal justice information system
34 central repository for the collection, storage, and dissemination of
35 criminal history record information. The central repository shall be
36 operated by the Kansas bureau of investigation under the administrative
37 control of the director.

38 (c) Except as otherwise provided by this subsection, every criminal
39 justice agency shall report criminal history record information, whether
40 collected manually or by means of an automated system, to the central
41 repository, in accordance with rules and regulations adopted pursuant to
42 this act. A criminal justice agency shall report to the central repository
43 those reportable events involving a violation of a county resolution or city

1 ordinance only when required by rules and regulations adopted by the
2 director.

3 (d) Reporting methods may include:

4 (1) Submittal of criminal history record information by a criminal
5 justice agency directly to the central repository;

6 (2) if the information can readily be collected and reported through
7 the court system, submittal to the central repository by the administrative
8 office of the courts; or

9 (3) if the information can readily be collected and reported through
10 criminal justice agencies that are part of a geographically based
11 information system, submittal to the central repository by the agencies.

12 (e) Nothing in this section shall prevent a criminal justice agency
13 from maintaining more detailed information than is required to be
14 reported to the central repository. However, the dissemination of that
15 criminal history record information is governed by the provisions of this
16 act.

17 (f) The director may determine, by rule and regulation, the
18 reportable events to be reported by each criminal justice agency, in order
19 to avoid duplication in reporting.

20 (g) *No court or criminal justice agency may assess fees or charges
21 against the central repository for providing criminal history record
22 information created prior to or after July 1, 2011.*

23 Sec. 6. K.S.A. 2010 Supp. 38-2312 is hereby amended to read as
24 follows: 38-2312. (a) Except as provided in subsection (b), any records or
25 files specified in this code concerning a juvenile may be expunged upon
26 application to a judge of the court of the county in which the records or
27 files are maintained. The application for expungement may be made by
28 the juvenile, if 18 years of age or older or, if the juvenile is less than 18
29 years of age, by the juvenile's parent or next friend.

30 (b) There shall be no expungement of records or files concerning
31 acts committed by a juvenile which, if committed by an adult, would
32 constitute a violation of K.S.A. 21-3401, *prior to its repeal, or section 37
33 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
34 thereto, murder in the first degree, K.S.A. 21-3402, *prior to its repeal, or
35 section 38 of chapter 136 of the 2010 Session Laws of Kansas*, and
36 amendments thereto, murder in the second degree, K.S.A. 21-3403, *prior
37 to its repeal, or section 39 of chapter 136 of the 2010 Session Laws of
38 Kansas*, and amendments thereto, voluntary manslaughter, K.S.A. 21-
39 3404, *prior to its repeal, or section 40 of chapter 136 of the 2010 Session
40 Laws of Kansas*, and amendments thereto, involuntary manslaughter,
41 K.S.A. 21-3439, *prior to its repeal, or section 36 of chapter 136 of the
42 2010 Session Laws of Kansas*, and amendments thereto, capital murder,
43 K.S.A. 21-3442, *prior to its repeal*, ~~and amendments thereto~~, involuntary

1 manslaughter while driving under the influence of alcohol or drugs,
2 K.S.A. 21-3502, *prior to its repeal, or section 67 of chapter 136 of the*
3 *2010 Session Laws of Kansas*, and amendments thereto, rape, K.S.A. 21-
4 3503, *prior to its repeal, or subsection (a) of section 70 of chapter 136 of*
5 *the 2010 Session Laws of Kansas*, and amendments thereto, indecent
6 liberties with a child, K.S.A. 21-3504, *prior to its repeal, or subsection*
7 *(b) of section 70 of chapter 136 of the 2010 Session Laws of Kansas*, and
8 amendments thereto, aggravated indecent liberties with a child, K.S.A.
9 21-3506, *prior to its repeal, or subsection (b) of section 68 of chapter*
10 *136 of the 2010 Session Laws of Kansas*, and amendments thereto,
11 aggravated criminal sodomy, K.S.A. 21-3510, *prior to its repeal, or*
12 *subsection (a) of section 72 of chapter 136 of the 2010 Session Laws of*
13 *Kansas*, and amendments thereto, indecent solicitation of a child, K.S.A.
14 21-3511, *prior to its repeal, or subsection (a) of section 72 of chapter 136*
15 *of the 2010 Session Laws of Kansas*, and amendments thereto, aggravated
16 indecent solicitation of a child, K.S.A. 21-3516, *prior to its repeal, or*
17 *section 74 of chapter 136 of the 2010 Session Laws of Kansas*, and
18 amendments thereto, sexual exploitation, K.S.A. 21-3603, *prior to its*
19 *repeal, or subsection (b) of section 81 of chapter 136 of the 2010 Session*
20 *Laws of Kansas*, and amendments thereto, aggravated incest, K.S.A. 21-
21 3608, *prior to its repeal, or subsection (a) of section 78 of chapter 136 of*
22 *the 2010 Session Laws of Kansas*, and amendments thereto, endangering
23 a child, K.S.A. 21-3609, *prior to its repeal, or section 79 of chapter 136*
24 *of the 2010 Session Laws of Kansas*, and amendments thereto, abuse of a
25 child, or which would constitute an attempt to commit a violation of any
26 of the offenses specified in this subsection.

27 (c) When a petition for expungement is filed, the court shall set a
28 date for a hearing on the petition and shall give notice thereof to the
29 county or district attorney. The petition shall state: (1) The juvenile's full
30 name; (2) the full name of the juvenile as reflected in the court record, if
31 different than (1); (3) the juvenile's sex and date of birth; (4) the offense
32 for which the juvenile was adjudicated; (5) the date of the trial; and (6)
33 the identity of the trial court. Except as otherwise provided by law, a
34 petition for expungement shall be accompanied by a docket fee in the
35 amount of \$100. On and after the effective date of this act through June
36 30, 2011, the supreme court may impose a charge, not to exceed \$15 per
37 case, to fund the costs of non-judicial personnel. All petitions for
38 expungement shall be docketed in the original action. Any person who
39 may have relevant information about the petitioner may testify at the
40 hearing. The court may inquire into the background of the petitioner.

41 (d) (1) After hearing, the court shall order the expungement of the
42 records and files if the court finds that:

43 (A) The juvenile has reached 23 years of age or that two years have

1 elapsed since the final discharge;

2 (B) since the final discharge of the juvenile, the juvenile has not
3 been convicted of a felony or of a misdemeanor other than a traffic
4 offense or adjudicated as a juvenile offender under the revised Kansas
5 juvenile justice code and no proceedings are pending seeking such a
6 conviction or adjudication; and

7 (C) the circumstances and behavior of the petitioner warrant
8 expungement.

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

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

22 (f) ~~A certified Copy~~ *Copies* of any order made pursuant to subsection
23 (a) or (c) shall be sent to ~~each public officer and agency in the county~~
24 ~~having possession of any~~ *the Kansas bureau of investigation, which shall*
25 *notify every juvenile or criminal justice agency which may possess*
26 records or files ordered to be expunged. If the ~~officer or agency~~ fails to
27 comply with the order within a reasonable time after its receipt, ~~the~~
28 ~~officer or such~~ agency may be adjudged in contempt of court and
29 punished accordingly.

30 (g) The court shall inform any juvenile who has been adjudicated a
31 juvenile offender of the provisions of this section.

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

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

39 (j) Whenever the records or files of any adjudication have been
40 expunged under the provisions of this section, the custodian of the
41 records or files of adjudication relating to that offense shall not disclose
42 the existence of such records or files, except when requested by:

43 (1) The person whose record was expunged;

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

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

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

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

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

26 (8) the Kansas sentencing commission; or

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

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

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

35 (k) *The provisions of subsection (j)(9) shall apply to all records*
36 *created prior to and after July 1, 2011.*

37 Sec. 7. Section 254 of chapter 136 of the 2010 Session Laws of
38 Kansas is hereby amended to read as follows: Sec. 254. (a) (1) Except as
39 provided in subsections (b) and (c), any person convicted in this state of a
40 traffic infraction, cigarette or tobacco infraction, misdemeanor or a class
41 D or E felony, or for crimes committed on or after July 1, 1993, nondrug
42 crimes ranked in severity levels 6 through 10 or any felony ranked in
43 severity level 4 of the drug grid, may petition the convicting court for the

1 expungement of such conviction or related arrest records if three or more
2 years have elapsed since the person: (A) Satisfied the sentence imposed;
3 or (B) was discharged from probation, a community correctional services
4 program, parole, postrelease supervision, conditional release or a
5 suspended sentence.

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

11 (b) Except as provided in subsection (c), no person may petition for
12 expungement until five or more years have elapsed since the person
13 satisfied the sentence imposed, the terms of a diversion agreement or was
14 discharged from probation, a community correctional services program,
15 parole, postrelease supervision, conditional release or a suspended
16 sentence, if such person was convicted of a class A, B or C felony, or for
17 crimes committed on or after July 1, 1993, if convicted of an off-grid
18 felony or any nondrug crime ranked in severity levels 1 through 5 or any
19 felony ranked in severity levels 1 through 3 of the drug grid, or:

20 (1) Vehicular homicide, as defined ~~by~~ *in K.S.A. 21-3405, prior to its*
21 *repeal, or section 41 of chapter 136 of the 2010 Session Laws of Kansas,*
22 *and amendments thereto, or as prohibited by any law of another state*
23 *which is in substantial conformity with that statute;*

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

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

32 (4) violating the provisions of the fifth clause of K.S.A. 8-142, and
33 amendments thereto, relating to fraudulent applications or violating the
34 provisions of a law of another state which is in substantial conformity
35 with that statute;

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

38 (6) failing to stop at the scene of an accident and perform the duties
39 required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto,
40 or required by a law of another state which is in substantial conformity
41 with those statutes;

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

- 1 (8) a violation of K.S.A. 21-3405b, prior to its repeal.
- 2 (c) There shall be no expungement of convictions for the following
3 offenses or of convictions for an attempt to commit any of the following
4 offenses:
- 5 (1) Rape as defined in *K.S.A. 21-3502, prior to its repeal, or section*
6 *67 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
7 thereto;
- 8 (2) indecent liberties with a child or aggravated indecent liberties
9 with a child as defined in *K.S.A. 21-3503 or 21-3504, prior to their*
10 *repeal, or section 70 of chapter 136 of the 2010 Session Laws of Kansas*,
11 and amendments thereto;
- 12 (3) criminal sodomy as defined in *subsection (a)(2) or (a)(3) of*
13 *K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) or (a)(4) of*
14 *section 68 of chapter 136 of the 2010 Session Laws of Kansas*, and
15 amendments thereto;
- 16 (4) aggravated criminal sodomy as defined in *K.S.A. 21-3506, prior*
17 *to its repeal, or section 68 of chapter 136 of the 2010 Session Laws of*
18 *Kansas*, and amendments thereto;
- 19 (5) indecent solicitation of a child or aggravated indecent solicitation
20 of a child as defined in *K.S.A. 21-3510 or 21-3511, prior to their repeal,*
21 *or section 72 of chapter 136 of the 2010 Session Laws of Kansas*, and
22 amendments thereto;
- 23 (6) sexual exploitation of a child as defined in *K.S.A. 21-3516, prior*
24 *to its repeal, or section 74 of chapter 136 of the 2010 Session Laws of*
25 *Kansas*, and amendments thereto;
- 26 (7) aggravated incest as defined in *K.S.A. 21-3603, prior to its*
27 *repeal, or section 81 of chapter 136 of the 2010 Session Laws of Kansas*,
28 and amendments thereto;
- 29 (8) endangering a child or aggravated endangering a child as defined
30 in *K.S.A. 21-3608 or 21-3608a, prior to their repeal, or section 78 of*
31 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
32 thereto;
- 33 (9) abuse of a child as defined in *K.S.A. 21-3609, prior to its repeal,*
34 *or section 79 of chapter 136 of the 2010 Session Laws of Kansas*, and
35 amendments thereto;
- 36 (10) capital murder as defined in *K.S.A. 21-3439, prior to its repeal,*
37 *or section 36 of chapter 136 of the 2010 Session Laws of Kansas*, and
38 amendments thereto;
- 39 (11) murder in the first degree as defined in *K.S.A. 21-3401, prior to*
40 *its repeal, or section 37 of chapter 136 of the 2010 Session Laws of*
41 *Kansas*, and amendments thereto;
- 42 (12) murder in the second degree as defined in *K.S.A. 21-3402,*
43 *prior to its repeal, or section 38 of chapter 136 of the 2010 Session Laws*

1 *of Kansas*, and amendments thereto;

2 (13) voluntary manslaughter as defined in *K.S.A. 21-3403*, prior to
3 *its repeal*, or section 39 of chapter 136 of the 2010 Session Laws of
4 *Kansas*, and amendments thereto;

5 (14) involuntary manslaughter as defined in *K.S.A. 21-3404*, prior to
6 *its repeal*, or section 40 of chapter 136 of the 2010 Session Laws of
7 *Kansas*, and amendments thereto;

8 (15) sexual battery as defined in *K.S.A. 21-3517*, prior to *its repeal*,
9 or section 69 of chapter 136 of the 2010 Session Laws of *Kansas*, and
10 amendments thereto, when the victim was less than 18 years of age at the
11 time the crime was committed;

12 (16) aggravated sexual battery as defined in *K.S.A. 21-3518*, prior to
13 *its repeal*, or section 69 of chapter 136 of the 2010 Session Laws of
14 *Kansas*, and amendments thereto;

15 (17) a violation of *K.S.A. 8-1567*, and amendments thereto,
16 including any diversion for such violation;

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

19 (19) any conviction for any offense in effect at any time prior to ~~the~~
20 ~~effective date of this act~~ *July 1, 2011*, that is comparable to any offense as
21 provided in this subsection.

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

26 (A) Defendant's full name;

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

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

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

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

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

35 (2) Except as *otherwise* provided ~~further~~, ~~there shall be no docket~~
36 ~~fee for filing a petition pursuant to this section~~ *by law*, a petition for
37 *expungement shall be accompanied by a docket fee in the amount of*
38 *\$100*. On and after ~~July 1, 2009~~ *through June 30, 2010* ~~April 15, 2010~~
39 *through June 30, 2011*, the supreme court may impose a charge, not to
40 exceed ~~\$10~~ *\$15* per case, to fund the costs of non-judicial personnel. The
41 charge established in this section shall be the only fee collected or
42 moneys in the nature of a fee collected for the case. Such charge shall
43 only be established by an act of the legislature and no other authority is

1 established by law or otherwise to collect a fee.

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

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

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

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

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

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

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

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

32 (A) In any application for licensure as a private detective, private
33 detective agency, certification as a firearms trainer pursuant to K.S.A.
34 ~~20092010~~ Supp. 75-7b21, and amendments thereto, or employment as a
35 detective with a private detective agency, as defined by K.S.A. 75-7b01,
36 and amendments thereto; as security personnel with a private patrol
37 operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with
38 an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of
39 the department of social and rehabilitation services;

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

42 (C) to aid in determining the petitioner's qualifications for
43 employment with the Kansas lottery or for work in sensitive areas within

1 the Kansas lottery as deemed appropriate by the executive director of the
2 Kansas lottery;

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

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

14 (F) upon application for a commercial driver's license under K.S.A.
15 8-2,125 through 8-2,142, and amendments thereto;

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

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

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

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

26 (K) for applications received on and after July 1, 2006, to aid in
27 determining the petitioner's qualifications for a license to carry a
28 concealed weapon pursuant to the personal and family protection act,
29 K.S.A. 20092010 Supp. 75-7c01 et seq., and amendments thereto;

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

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

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

39 (g) Whenever a person is convicted of a crime, pleads guilty and
40 pays a fine for a crime, is placed on parole, postrelease supervision or
41 probation, is assigned to a community correctional services program, is
42 granted a suspended sentence or is released on conditional release, the
43 person shall be informed of the ability to expunge the arrest records or

1 conviction. Whenever a person enters into a diversion agreement, the
2 person shall be informed of the ability to expunge the diversion.

3 (h) Subject to the disclosures required pursuant to subsection (f), in
4 any application for employment, license or other civil right or privilege,
5 or any appearance as a witness, a person whose arrest records, conviction
6 or diversion of a crime has been expunged under this statute may state
7 that such person has never been arrested, convicted or diverted of such
8 crime, but the expungement of a felony conviction does not relieve an
9 individual of complying with any state or federal law relating to the use
10 or possession of firearms by persons convicted of a felony.

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

17 (1) The person whose record was expunged;

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

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

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

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

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

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

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

1 the Kansas lottery as deemed appropriate by the executive director of the
2 Kansas lottery;

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

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

18 (11) the Kansas sentencing commission;

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

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

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

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

39 (16) 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.; or

43 (17) *The Kansas bureau of investigation for the purposes of:*

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

4 (B) *providing information or doocumentation to the federal bureau*
5 *of investigation, in connection with the national instant criminal*
6 *background check system, to determine a person's qualification to*
7 *possess a firearm.*

8 (j) *The provisions of subsection (i)(17) shall apply to records*
9 *created prior to and after July 1, 2011.*

10 Sec. 8. K.S.A. 22-4701 and 22-4705 and K.S.A. 2010 Supp. 12-
11 4516a, 22-2410 and 38-2312 and section 254 of chapter 136 or the 2010
12 Session Laws of Kansas are hereby repealed.

13 Sec. 9. This act shall take effect and be in force from and after its
14 publication in the statute book.

15