

{As Amended by Senate Committee of the Whole}

Session of 2011

Substitute for SENATE BILL No. 159

By Committee on Judiciary

3-21

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to conditions of release; searches of parolees and persons on
3 postrelease supervision; conditions for sex offenders; conditions for
4 persons on probation; ~~amending K.S.A. 2010 Supp. 22-3717 and~~
5 ~~section 247 of chapter 136 of the 2010 Session Laws of Kansas and~~
6 ~~repealing the existing sections; also repealing K.S.A. 2010 Supp. 21-~~
7 ~~4610a and 22-3717c. {expunged records; petitions for relief;~~
8 **amending K.S.A. 22-4701 and 22-4705 and K.S.A. 2010 Supp. 12-**
9 **4516a, 22-2410, 22-3717 and 38-2312 and sections 247 and 254 of**
10 **chapter 136 of the 2010 Session Laws of Kansas and repealing the**
11 **existing sections; also repealing K.S.A. 2010 Supp. 21-4610a, 21-**
12 **4619 and 22-3717c.}**
13

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

15 Section 1. K.S.A. 2010 Supp. 22-3717 is hereby amended to read as
16 follows: 22-3717. (a) Except as otherwise provided by this section; K.S.A.
17 1993 Supp. 21-4628, prior to its repeal; K.S.A. 21-4635 through 21-4638,
18 *prior to their repeal; K.S.A. 21-4624, prior to its repeal; K.S.A. 21-4642,*
19 *prior to its repeal; sections 257, 260, 263, 264, 265 and 266 of chapter*
20 *136 of the 2010 Session Laws of Kansas, and amendments thereto; and*
21 *K.S.A. 8-1567, and amendments thereto; ~~K.S.A. 21-4642, and~~*
22 *~~amendments thereto; and K.S.A. 21-4624, and amendments thereto,~~ an*
23 *inmate, including an inmate sentenced pursuant to K.S.A. 21-4618, prior*
24 *to its repeal, or section 276 of chapter 136 of the 2010 Session Laws of*
25 *Kansas, and amendments thereto, shall be eligible for parole after serving*
26 *the entire minimum sentence imposed by the court, less good time credits.*

27 (b) (1) Except as provided by K.S.A. 21-4635 through 21-4638, *prior*
28 *to their repeal, and sections 260, 263, 264 and 265 of chapter 136 of the*
29 *2010 Session Laws of Kansas, and amendments thereto, an inmate*
30 *sentenced to imprisonment for the crime of capital murder, or an inmate*
31 *sentenced for the crime of murder in the first degree based upon a finding*
32 *of premeditated murder, committed on or after July 1, 1994, shall be*
33 *eligible for parole after serving 25 years of confinement, without*
34 *deduction of any good time credits.*

35 (2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993

1 Supp. 21-4628, prior to its repeal, ~~and~~ K.S.A. 21-4635 through 21-4638,
2 *prior to their repeal, and sections 260, 263, 264 and 265 of chapter 136 of*
3 *the 2010 Session Laws of Kansas*, and amendments thereto, an inmate
4 sentenced to imprisonment for an off-grid offense committed on or after
5 July 1, 1993, but prior to July 1, 1999, shall be eligible for parole after
6 serving 15 years of confinement, without deduction of any good time
7 credits and an inmate sentenced to imprisonment for an off-grid offense
8 committed on or after July 1, 1999, shall be eligible for parole after
9 serving 20 years of confinement without deduction of any good time
10 credits.

11 (3) Except as provided by K.S.A. 1993 Supp. 21-4628, prior to its
12 repeal, an inmate sentenced for a class A felony committed before July 1,
13 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, *prior to*
14 *its repeal, or section 276 of chapter 136 of the 2010 Session Laws of*
15 *Kansas*, and amendments thereto, shall be eligible for parole after serving
16 15 years of confinement, without deduction of any good time credits.

17 (4) An inmate sentenced to imprisonment for a violation of
18 subsection (a) of K.S.A. 21-3402, *prior to its repeal, ~~and amendments~~*
19 ~~thereto~~, committed on or after July 1, 1996, but prior to July 1, 1999, shall
20 be eligible for parole after serving 10 years of confinement without
21 deduction of any good time credits.

22 (5) An inmate sentenced to imprisonment pursuant to K.S.A. 21-
23 4643, *prior to its repeal, or section 267 of chapter 136 of the 2010 Session*
24 *Laws of Kansas*, and amendments thereto, committed on or after July 1,
25 2006, shall be eligible for parole after serving the mandatory term of
26 imprisonment without deduction of any good time credits.

27 (c) (1) Except as provided in subsection (e), if an inmate is sentenced
28 to imprisonment for more than one crime and the sentences run
29 consecutively, the inmate shall be eligible for parole after serving the total
30 of:

31 (A) The aggregate minimum sentences, as determined pursuant to
32 K.S.A. 21-4608, *prior to its repeal, or section 246 of chapter 136 of the*
33 *2010 Session Laws of Kansas*, and amendments thereto, less good time
34 credits for those crimes which are not class A felonies; and

35 (B) an additional 15 years, without deduction of good time credits,
36 for each crime which is a class A felony.

37 (2) If an inmate is sentenced to imprisonment pursuant to K.S.A. 21-
38 4643, *prior to its repeal, or section 267 of chapter 136 of the 2010 Session*
39 *Laws of Kansas*, and amendments thereto, for crimes committed on or
40 after July 1, 2006, the inmate shall be eligible for parole after serving the
41 mandatory term of imprisonment.

42 (d) (1) Persons sentenced for crimes, other than off-grid crimes,
43 committed on or after July 1, 1993, or persons subject to subparagraph

1 (G), will not be eligible for parole, but will be released to a mandatory
2 period of postrelease supervision upon completion of the prison portion of
3 their sentence as follows:

4 (A) Except as provided in subparagraphs (D) and (E), persons
5 sentenced for nondrug severity level 1 through 4 crimes and drug severity
6 levels 1 and 2 crimes must serve 36 months, plus the amount of good time
7 and program credit earned and retained pursuant to K.S.A. 21-4722, *prior*
8 *to its repeal, or section 302 of chapter 136 of the 2010 Session Laws of*
9 *Kansas*, and amendments thereto, on postrelease supervision.

10 (B) Except as provided in subparagraphs (D) and (E), persons
11 sentenced for nondrug severity levels 5 and 6 crimes and drug severity
12 level 3 crimes must serve 24 months, plus the amount of good time and
13 program credit earned and retained pursuant to K.S.A. 21-4722, *prior to*
14 *its repeal, or section 302 of chapter 136 of the 2010 Session Laws of*
15 *Kansas*, and amendments thereto, on postrelease supervision.

16 (C) Except as provided in subparagraphs (D) and (E), persons
17 sentenced for nondrug severity level 7 through 10 crimes and drug severity
18 level 4 crimes must serve 12 months, plus the amount of good time and
19 program credit earned and retained pursuant to K.S.A. 21-4722, *prior to*
20 *its repeal, or section 302 of chapter 136 of the 2010 Session Laws of*
21 *Kansas*, and amendments thereto, on postrelease supervision.

22 (D) (i) The sentencing judge shall impose the postrelease supervision
23 period provided in subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C), unless
24 the judge finds substantial and compelling reasons to impose a departure
25 based upon a finding that the current crime of conviction was sexually
26 motivated. In that event, departure may be imposed to extend the
27 postrelease supervision to a period of up to 60 months.

28 (ii) If the sentencing judge departs from the presumptive postrelease
29 supervision period, the judge shall state on the record at the time of
30 sentencing the substantial and compelling reasons for the departure.
31 Departures in this section are subject to appeal pursuant to K.S.A. 21-
32 4721, *prior to its repeal, or section 301 of chapter 136 of the 2010 Session*
33 *Laws of Kansas*, and amendments thereto.

34 (iii) In determining whether substantial and compelling reasons exist,
35 the court shall consider:

36 (a) Written briefs or oral arguments submitted by either the defendant
37 or the state;

38 (b) any evidence received during the proceeding;

39 (c) the presentence report, the victim's impact statement and any
40 psychological evaluation as ordered by the court pursuant to subsection (e)
41 of K.S.A. 21-4714, *prior to its repeal, or subsection (e) of section 294 of*
42 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;
43 and

1 (d) any other evidence the court finds trustworthy and reliable.

2 (iv) The sentencing judge may order that a psychological evaluation
3 be prepared and the recommended programming be completed by the
4 offender. The department of corrections or the parole board shall ensure
5 that court ordered sex offender treatment be carried out.

6 (v) In carrying out the provisions of subparagraph (d)(1)(D), the court
7 shall refer to K.S.A. 21-4718, *prior to its repeal, or section 298 of chapter*
8 *136 of the 2010 Session Laws of Kansas*, and amendments thereto.

9 (vi) Upon petition, the parole board may provide for early discharge
10 from the postrelease supervision period upon completion of court ordered
11 programs and completion of the presumptive postrelease supervision
12 period, as determined by the crime of conviction, pursuant to subparagraph
13 (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from postrelease
14 supervision is at the discretion of the parole board.

15 (vii) Persons convicted of crimes deemed sexually violent or sexually
16 motivated, shall be registered according to the offender registration act,
17 K.S.A. 22-4901 through 22-4910, and amendments thereto.

18 (viii) Persons convicted of K.S.A. 21-3510 or 21-3511, *prior to their*
19 *repeal, or section 72 of chapter 136 of the 2010 Session Laws of Kansas*,
20 and amendments thereto, shall be required to participate in a treatment
21 program for sex offenders during the postrelease supervision period.

22 (E) The period of postrelease supervision provided in subparagraphs
23 (A) and (B) may be reduced by up to 12 months and the period of
24 postrelease supervision provided in subparagraph (C) may be reduced by
25 up to six months based on the offender's compliance with conditions of
26 supervision and overall performance while on postrelease supervision. The
27 reduction in the supervision period shall be on an earned basis pursuant to
28 rules and regulations adopted by the secretary of corrections.

29 (F) In cases where sentences for crimes from more than one severity
30 level have been imposed, the offender shall serve the longest period of
31 postrelease supervision as provided by this section available for any crime
32 upon which sentence was imposed irrespective of the severity level of the
33 crime. Supervision periods will not aggregate.

34 (G) Except as provided in subsection (u), persons convicted of a
35 sexually violent crime committed on or after July 1, 2006, and who are
36 released from prison, shall be released to a mandatory period of
37 postrelease supervision for the duration of the person's natural life.

38 (2) As used in this section, "sexually violent crime" means:

39 (A) Rape, K.S.A. 21-3502, *prior to its repeal, or section 67 of*
40 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

41 (B) indecent liberties with a child, K.S.A. 21-3503, *prior to its*
42 *repeal, or subsection (a) of section 70 of chapter 136 of the 2010 Session*
43 *Laws of Kansas*, and amendments thereto;

1 (C) aggravated indecent liberties with a child, K.S.A. 21-3504, *prior*
2 *to its repeal, or subsection (b) of section 70 of chapter 136 of the 2010*
3 *Session Laws of Kansas*, and amendments thereto;

4 (D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505,
5 *prior to its repeal, or subsection (a)(3) and (a)(4) of section 68 of chapter*
6 *136 of the 2010 Session Laws of Kansas*, and amendments thereto;

7 (E) aggravated criminal sodomy, K.S.A. 21-3506, *prior to its repeal,*
8 *or subsection (b) of section 68 of chapter 136 of the 2010 Session Laws of*
9 *Kansas*, and amendments thereto;

10 (F) indecent solicitation of a child, K.S.A. 21-3510, *prior to its*
11 *repeal, or subsection (a) of section 72 of chapter 136 of the 2010 Session*
12 *Laws of Kansas*, and amendments thereto;

13 (G) aggravated indecent solicitation of a child, K.S.A. 21-3511, *prior*
14 *to its repeal, or subsection (b) of section 72 of chapter 136 of the 2010*
15 *Session Laws of Kansas*, and amendments thereto;

16 (H) sexual exploitation of a child, K.S.A. 21-3516, *prior to its repeal,*
17 *or section 74 of chapter 136 of the 2010 Session Laws of Kansas*, and
18 amendments thereto;

19 (I) aggravated sexual battery, K.S.A. 21-3518, *prior to its repeal, or*
20 *subsection (b) of section 69 of chapter 136 of the 2010 Session Laws of*
21 *Kansas*, and amendments thereto;

22 (J) aggravated incest, K.S.A. 21-3603, *prior to its repeal, or*
23 *subsection (b) of section 81 of chapter 136 of the 2010 Session Laws of*
24 *Kansas*, and amendments thereto; or

25 (K) an attempt, conspiracy or criminal solicitation, as defined in
26 K.S.A. 21-3301, 21-3302 or 21-3303, *prior to their repeal, or sections 33,*
27 *34 or 35 of chapter 136 of the 2010 Session Laws of Kansas*, and
28 amendments thereto, of a sexually violent crime as defined in this section.

29 "Sexually motivated" means that one of the purposes for which the
30 defendant committed the crime was for the purpose of the defendant's
31 sexual gratification.

32 (e) If an inmate is sentenced to imprisonment for a crime committed
33 while on parole or conditional release, the inmate shall be eligible for
34 parole as provided by subsection (c), except that the Kansas parole board
35 may postpone the inmate's parole eligibility date by assessing a penalty not
36 exceeding the period of time which could have been assessed if the
37 inmate's parole or conditional release had been violated for reasons other
38 than conviction of a crime.

39 (f) If a person is sentenced to prison for a crime committed on or after
40 July 1, 1993, while on probation, parole, conditional release or in a
41 community corrections program, for a crime committed prior to July 1,
42 1993, and the person is not eligible for retroactive application of the
43 sentencing guidelines and amendments thereto pursuant to K.S.A. 21-

1 4724, *prior to its repeal, and amendments thereto*; the new sentence shall
2 not be aggregated with the old sentence, but shall begin when the person is
3 paroled or reaches the conditional release date on the old sentence. If the
4 offender was past the offender's conditional release date at the time the
5 new offense was committed, the new sentence shall not be aggregated with
6 the old sentence but shall begin when the person is ordered released by the
7 Kansas parole board or reaches the maximum sentence expiration date on
8 the old sentence, whichever is earlier. The new sentence shall then be
9 served as otherwise provided by law. The period of postrelease supervision
10 shall be based on the new sentence, except that those offenders whose old
11 sentence is a term of imprisonment for life, imposed pursuant to K.S.A.
12 1993 Supp. 21-4628, prior to its repeal, or an indeterminate sentence with
13 a maximum term of life imprisonment, for which there is no conditional
14 release or maximum sentence expiration date, shall remain on postrelease
15 supervision for life or until discharged from supervision by the Kansas
16 parole board.

17 (g) Subject to the provisions of this section, the Kansas parole board
18 may release on parole those persons confined in institutions who are
19 eligible for parole when: (1) The board believes that the inmate should be
20 released for hospitalization, for deportation or to answer the warrant or
21 other process of a court and is of the opinion that there is reasonable
22 probability that the inmate can be released without detriment to the
23 community or to the inmate; or (2) the secretary of corrections has
24 reported to the board in writing that the inmate has satisfactorily
25 completed the programs required by any agreement entered under K.S.A.
26 75-5210a, and amendments thereto, or any revision of such agreement, and
27 the board believes that the inmate is able and willing to fulfill the
28 obligations of a law abiding citizen and is of the opinion that there is
29 reasonable probability that the inmate can be released without detriment to
30 the community or to the inmate. Parole shall not be granted as an award of
31 clemency and shall not be considered a reduction of sentence or a pardon.

32 (h) The Kansas parole board shall hold a parole hearing at least the
33 month prior to the month an inmate will be eligible for parole under
34 subsections (a), (b) and (c). At least the month preceding the parole
35 hearing, the county or district attorney of the county where the inmate was
36 convicted shall give written notice of the time and place of the public
37 comment sessions for the inmate to any victim of the inmate's crime who
38 is alive and whose address is known to the county or district attorney or, if
39 the victim is deceased, to the victim's family if the family's address is
40 known to the county or district attorney. Except as otherwise provided,
41 failure to notify pursuant to this section shall not be a reason to postpone a
42 parole hearing. In the case of any inmate convicted of an off-grid felony or
43 a class A felony the secretary of corrections shall give written notice of the

1 time and place of the public comment session for such inmate at least one
2 month preceding the public comment session to any victim of such
3 inmate's crime or the victim's family pursuant to K.S.A. 74-7338, and
4 amendments thereto. If notification is not given to such victim or such
5 victim's family in the case of any inmate convicted of an off-grid felony or
6 a class A felony, the board shall postpone a decision on parole of the
7 inmate to a time at least 30 days after notification is given as provided in
8 this section. Nothing in this section shall create a cause of action against
9 the state or an employee of the state acting within the scope of the
10 employee's employment as a result of the failure to notify pursuant to this
11 section. If granted parole, the inmate may be released on parole on the date
12 specified by the board, but not earlier than the date the inmate is eligible
13 for parole under subsections (a), (b) and (c). At each parole hearing and, if
14 parole is not granted, at such intervals thereafter as it determines
15 appropriate, the Kansas parole board shall consider: (1) Whether the
16 inmate has satisfactorily completed the programs required by any
17 agreement entered under K.S.A. 75-5210a, and amendments thereto, or
18 any revision of such agreement; and (2) all pertinent information regarding
19 such inmate, including, but not limited to, the circumstances of the offense
20 of the inmate; the presentence report; the previous social history and
21 criminal record of the inmate; the conduct, employment, and attitude of the
22 inmate in prison; the reports of such physical and mental examinations as
23 have been made, including, but not limited to, risk factors revealed by any
24 risk assessment of the inmate; comments of the victim and the victim's
25 family including in person comments, contemporaneous comments and
26 prerecorded comments made by any technological means; comments of
27 the public; official comments; any recommendation by the staff of the
28 facility where the inmate is incarcerated; proportionality of the time the
29 inmate has served to the sentence a person would receive under the Kansas
30 sentencing guidelines for the conduct that resulted in the inmate's
31 incarceration; and capacity of state correctional institutions.

32 (i) In those cases involving inmates sentenced for a crime committed
33 after July 1, 1993, the parole board will review the inmates proposed
34 release plan. The board may schedule a hearing if they desire. The board
35 may impose any condition they deem necessary to insure public safety, aid
36 in the reintegration of the inmate into the community, or items not
37 completed under the agreement entered into under K.S.A. 75-5210a, and
38 amendments thereto. The board may not advance or delay an inmate's
39 release date. Every inmate while on postrelease supervision shall remain in
40 the legal custody of the secretary of corrections and is subject to the orders
41 of the secretary.

42 (j) (1) Before ordering the parole of any inmate, the Kansas parole
43 board shall have the inmate appear either in person or via a video

1 conferencing format and shall interview the inmate unless impractical
2 because of the inmate's physical or mental condition or absence from the
3 institution. Every inmate while on parole shall remain in the legal custody
4 of the secretary of corrections and is subject to the orders of the secretary.
5 Whenever the Kansas parole board formally considers placing an inmate
6 on parole and no agreement has been entered into with the inmate under
7 K.S.A. 75-5210a, and amendments thereto, the board shall notify the
8 inmate in writing of the reasons for not granting parole. If an agreement
9 has been entered under K.S.A. 75-5210a, and amendments thereto, and the
10 inmate has not satisfactorily completed the programs specified in the
11 agreement, or any revision of such agreement, the board shall notify the
12 inmate in writing of the specific programs the inmate must satisfactorily
13 complete before parole will be granted. If parole is not granted only
14 because of a failure to satisfactorily complete such programs, the board
15 shall grant parole upon the secretary's certification that the inmate has
16 successfully completed such programs. If an agreement has been entered
17 under K.S.A. 75-5210a, and amendments thereto, and the secretary of
18 corrections has reported to the board in writing that the inmate has
19 satisfactorily completed the programs required by such agreement, or any
20 revision thereof, the board shall not require further program participation.
21 However, if the board determines that other pertinent information
22 regarding the inmate warrants the inmate's not being released on parole,
23 the board shall state in writing the reasons for not granting the parole. If
24 parole is denied for an inmate sentenced for a crime other than a class A or
25 class B felony or an off-grid felony, the board shall hold another parole
26 hearing for the inmate not later than one year after the denial unless the
27 parole board finds that it is not reasonable to expect that parole would be
28 granted at a hearing if held in the next three years or during the interim
29 period of a deferral. In such case, the parole board may defer subsequent
30 parole hearings for up to three years but any such deferral by the board
31 shall require the board to state the basis for its findings. If parole is denied
32 for an inmate sentenced for a class A or class B felony or an off-grid
33 felony, the board shall hold another parole hearing for the inmate not later
34 than three years after the denial unless the parole board finds that it is not
35 reasonable to expect that parole would be granted at a hearing if held in
36 the next 10 years or during the interim period of a deferral. In such case,
37 the parole board may defer subsequent parole hearings for up to 10 years
38 but any such deferral shall require the board to state the basis for its
39 findings.

40 (2) Inmates sentenced for a class A or class B felony who have not
41 had a parole board hearing in the five years prior to July 1, 2010, shall
42 have such inmates' cases reviewed by the parole board on or before July 1,
43 2012. Such review shall begin with the inmates with the oldest deferral

1 date and progress to the most recent. Such review shall be done utilizing
2 existing resources unless the parole board determines that such resources
3 are insufficient. If the parole board determines that such resources are
4 insufficient, then the provisions of this paragraph are subject to
5 appropriations therefor.

6 (k) Parolees and persons on postrelease supervision shall be assigned,
7 upon release, to the appropriate level of supervision pursuant to the criteria
8 established by the secretary of corrections. *Parolees and persons on*
9 *postrelease supervision are, and shall agree in writing to be, subject to*
10 *search or seizure by a parole officer, special enforcement officer or other*
11 *law enforcement officer at any time of the day or night, with or without a*
12 *search warrant and with or without cause.*

13 (l) The Kansas parole board shall adopt rules and regulations in
14 accordance with K.S.A. 77-415 et seq., and amendments thereto, not
15 inconsistent with the law and as it may deem proper or necessary, with
16 respect to the conduct of parole hearings, postrelease supervision reviews,
17 revocation hearings, orders of restitution, reimbursement of expenditures
18 by the state board of indigents' defense services and other conditions to be
19 imposed upon parolees or releasees. Whenever an order for parole or
20 postrelease supervision is issued it shall recite the conditions thereof.

21 (m) Whenever the Kansas parole board orders the parole of an inmate
22 or establishes conditions for an inmate placed on postrelease supervision,
23 the board:

24 (1) Unless it finds compelling circumstances which would render a
25 plan of payment unworkable, shall order as a condition of parole or
26 postrelease supervision that the parolee or the person on postrelease
27 supervision pay any transportation expenses resulting from returning the
28 parolee or the person on postrelease supervision to this state to answer
29 criminal charges or a warrant for a violation of a condition of probation,
30 assignment to a community correctional services program, parole,
31 conditional release or postrelease supervision;

32 (2) to the extent practicable, shall order as a condition of parole or
33 postrelease supervision that the parolee or the person on postrelease
34 supervision make progress towards or successfully complete the
35 equivalent of a secondary education if the inmate has not previously
36 completed such educational equivalent and is capable of doing so;

37 (3) may order that the parolee or person on postrelease supervision
38 perform community or public service work for local governmental
39 agencies, private corporations organized not-for-profit or charitable or
40 social service organizations performing services for the community;

41 (4) may order the parolee or person on postrelease supervision to pay
42 the administrative fee imposed pursuant to K.S.A. 22-4529, and
43 amendments thereto, unless the board finds compelling circumstances

1 which would render payment unworkable; ~~and~~

2 (5) unless it finds compelling circumstances which would render a
3 plan of payment unworkable, shall order that the parolee or person on
4 postrelease supervision reimburse the state for all or part of the
5 expenditures by the state board of indigents' defense services to provide
6 counsel and other defense services to the person. In determining the
7 amount and method of payment of such sum, the parole board shall take
8 account of the financial resources of the person and the nature of the
9 burden that the payment of such sum will impose. Such amount shall not
10 exceed the amount claimed by appointed counsel on the payment voucher
11 for indigents' defense services or the amount prescribed by the board of
12 indigents' defense services reimbursement tables as provided in K.S.A. 22-
13 4522, and amendments thereto, whichever is less, minus any previous
14 payments for such services; *and*

15 (6) *shall order that the parolee or person on postrelease supervision*
16 *agree in writing to be subject to search or seizure by a parole officer,*
17 *special enforcement officer or other law enforcement officer at any time of*
18 *the day or night, with or without a search warrant and with or without*
19 *cause.*

20 (n) If the court which sentenced an inmate specified at the time of
21 sentencing the amount and the recipient of any restitution ordered as a
22 condition of parole or postrelease supervision, the Kansas parole board
23 shall order as a condition of parole or postrelease supervision that the
24 inmate pay restitution in the amount and manner provided in the journal
25 entry unless the board finds compelling circumstances which would render
26 a plan of restitution unworkable.

27 (o) Whenever the Kansas parole board grants the parole of an inmate,
28 the board, within ~~10~~ 14 days of the date of the decision to grant parole,
29 shall give written notice of the decision to the county or district attorney of
30 the county where the inmate was sentenced.

31 (p) When an inmate is to be released on postrelease supervision, the
32 secretary, within 30 days prior to release, shall provide the county or
33 district attorney of the county where the inmate was sentenced written
34 notice of the release date.

35 (q) Inmates shall be released on postrelease supervision upon the
36 termination of the prison portion of their sentence. Time served while on
37 postrelease supervision will vest.

38 (r) An inmate who is allocated regular good time credits as provided
39 in K.S.A. 22-3725, and amendments thereto, may receive meritorious
40 good time credits in increments of not more than 90 days per meritorious
41 act. These credits may be awarded by the secretary of corrections when an
42 inmate has acted in a heroic or outstanding manner in coming to the
43 assistance of another person in a life threatening situation, preventing

1 injury or death to a person, preventing the destruction of property or taking
2 actions which result in a financial savings to the state.

3 (s) The provisions of subsections (d)(1)(A), (d)(1)(B), (d)(1)(C) and
4 (d)(1)(E) shall be applied retroactively as provided in subsection (t).

5 (t) For offenders sentenced prior to the effective date of this act who
6 are eligible for modification of their postrelease supervision obligation, the
7 department of corrections shall modify the period of postrelease
8 supervision as provided for by this section for offenders convicted of
9 severity level 9 and 10 crimes on the sentencing guidelines grid for
10 nondrug crimes and severity level 4 crimes on the sentencing guidelines
11 grid for drug crimes on or before September 1, 2000; for offenders
12 convicted of severity level 7 and 8 crimes on the sentencing guidelines
13 grid for nondrug crimes on or before November 1, 2000; and for offenders
14 convicted of severity level 5 and 6 crimes on the sentencing guidelines
15 grid for nondrug crimes and severity level 3 crimes on the sentencing
16 guidelines grid for drug crimes on or before January 1, 2001.

17 (u) An inmate sentenced to imprisonment pursuant to K.S.A. 21-
18 4643, *prior to its repeal, or section 267 of chapter 136 of the 2010 Session*
19 *Laws of Kansas*, and amendments thereto, for crimes committed on or
20 after July 1, 2006, shall be placed on parole for life and shall not be
21 discharged from supervision by the Kansas parole board. When the board
22 orders the parole of an inmate pursuant to this subsection, the board shall
23 order as a condition of parole that the inmate be electronically monitored
24 for the duration of the inmate's natural life.

25 (v) Whenever the Kansas parole board or the court orders a person to
26 be electronically monitored, the board or court shall order the person to
27 reimburse the state for all or part of the cost of such monitoring. In
28 determining the amount and method of payment of such sum, the board or
29 court shall take account of the financial resources of the person and the
30 nature of the burden that the payment of such sum will impose.

31 (w) (1) *On and after July 1, 2011, for any inmate who is a sex*
32 *offender, as defined in K.S.A. 22-4902, and amendments thereto, whenever*
33 *the Kansas parole board orders the parole of such inmate or establishes*
34 *conditions for such inmate placed on postrelease supervision, such inmate*
35 *shall agree in writing to not possess pornographic materials. As used in*
36 *this subsection, "pornographic materials" means:*

37 (A) *Any obscene material or performance depicting sexual conduct,*
38 *sexual contact or a sexual performance; and*

39 (B) *any visual depiction, including any photograph, film, video,*
40 *picture or computer or computer-generated image or picture, whether*
41 *made or produced by electronic, mechanical or other means, of sexually*
42 *explicit conduct.*

43 (2) *The provisions of this subsection shall be applied retroactively to*

1 *every sex offender, as defined in K.S.A. 22-4902, and amendments thereto,*
2 *who is on parole or postrelease supervision on July 1, 2011. The parole*
3 *board shall obtain the written agreement required by this subsection from*
4 *such offenders as soon as practicable.*

5 Sec. 2. Section 247 of chapter 136 of the 2010 Session Laws of
6 Kansas is hereby amended to read as follows: Sec. 247. (a) Except as
7 required by subsection (c), nothing in this section shall be construed to
8 limit the authority of the court to impose or modify any general or specific
9 conditions of probation, suspension of sentence or assignment to a
10 community correctional services program. The court services officer or
11 community correctional services officer may recommend, and the court
12 may order, the imposition of any conditions of probation, suspension of
13 sentence or assignment to a community correctional services program. For
14 crimes committed on or after July 1, 1993, in presumptive nonprison
15 cases, the court services officer or community correctional services officer
16 may recommend, and the court may order, the imposition of any
17 conditions of probation or assignment to a community correctional
18 services program. The court may at any time order the modification of
19 such conditions, after notice to the court services officer or community
20 correctional services officer and an opportunity for such officer to be heard
21 thereon. The court shall cause a copy of any such order to be delivered to
22 the court services officer and the probationer or to the community
23 correctional services officer and the community corrections participant, as
24 the case may be. The provisions of K.S.A. 75-5291, and amendments
25 thereto, shall be applicable to any assignment to a community correctional
26 services program pursuant to this section.

27 (b) The court may impose any conditions of probation, suspension of
28 sentence or assignment to a community correctional services program that
29 the court deems proper, including, but not limited to, requiring that the
30 defendant:

31 (1) Avoid such injurious or vicious habits, as directed by the court,
32 court services officer or community correctional services officer;

33 (2) avoid such persons or places of disreputable or harmful character,
34 as directed by the court, court services officer or community correctional
35 services officer;

36 (3) report to the court services officer or community correctional
37 services officer as directed;

38 (4) permit the court services officer or community correctional
39 services officer to visit the defendant at home or elsewhere;

40 (5) work faithfully at suitable employment insofar as possible;

41 (6) remain within the state unless the court grants permission to
42 leave;

43 (7) pay a fine or costs, applicable to the offense, in one or several

- 1 sums and in the manner as directed by the court;
- 2 (8) support the defendant's dependents;
- 3 (9) reside in a residential facility located in the community and
- 4 participate in educational, counseling, work and other correctional or
- 5 rehabilitative programs;
- 6 (10) perform community or public service work for local
- 7 governmental agencies, private corporations organized not for profit, or
- 8 charitable or social service organizations performing services for the
- 9 community;
- 10 (11) perform services under a system of day fines whereby the
- 11 defendant is required to satisfy fines, costs or reparation or restitution
- 12 obligations by performing services for a period of days, determined by the
- 13 court on the basis of ability to pay, standard of living, support obligations
- 14 and other factors;
- 15 (12) participate in a house arrest program pursuant to section 249 *of*
- 16 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;
- 17 (13) order the defendant to pay the administrative fee authorized by
- 18 K.S.A. 22-4529, and amendments thereto, unless waived by the court; or
- 19 (14) in felony cases, except for violations of K.S.A. 8-1567, and
- 20 amendments thereto, be confined in a county jail not to exceed 60 days,
- 21 which need not be served consecutively.
- 22 (c) In addition to any other conditions of probation, suspension of
- 23 sentence or assignment to a community correctional services program, the
- 24 court shall order the defendant to comply with each of the following
- 25 conditions:
- 26 (1) The defendant shall obey all laws of the United States, the state of
- 27 Kansas and any other jurisdiction to the laws of which the defendant may
- 28 be subject;
- 29 (2) make reparation or restitution to the aggrieved party for the
- 30 damage or loss caused by the defendant's crime, in an amount and manner
- 31 determined by the court and to the person specified by the court, unless the
- 32 court finds compelling circumstances which would render a plan of
- 33 restitution unworkable. If the court finds a plan of restitution unworkable,
- 34 the court shall state on the record in detail the reasons therefore;
- 35 (3) (A) pay a ~~probation or community correctional~~ ~~services~~ ~~correctional supervision~~ fee of ~~\$25~~~~\$60~~ if the person was convicted
- 36 of a misdemeanor or a fee of ~~\$50~~~~\$120~~ if the person was convicted of a
- 37 felony. In any case the amount of the ~~probation or community correctional~~ ~~services~~ ~~correctional supervision~~ fee specified by this paragraph may be
- 38 reduced or waived by the judge if the person is unable to pay that amount;
- 39 (B) the ~~probation or community correctional services~~ ~~correctional~~ ~~supervision~~ fee imposed by this paragraph shall be charged and collected
- 40 by the district court. The clerk of the district court shall remit all revenues
- 41
- 42
- 43

1 received under this paragraph from ~~probation or community correctional~~
2 ~~services~~ *correctional supervision* fees to the state treasurer in accordance
3 with the provisions of K.S.A. 75-4215, and amendments thereto. Upon
4 receipt of each such remittance, the state treasurer shall deposit the entire
5 amount in the state treasury to the credit of the state general fund, *a sum*
6 *equal to 41.67% of such remittance, and to the correctional supervision*
7 *fund, a sum equal to 58.33% of such remittance;*

8 *(C) this paragraph shall apply to persons placed on felony or*
9 *misdemeanor probation or released on misdemeanor parole to reside in*
10 *Kansas and supervised by Kansas court services officers under the*
11 *interstate compact for offender supervision; and*

12 ~~(C)(D)~~ *(D) this paragraph shall not apply to persons placed on probation*
13 *or released on parole to reside in Kansas under the uniform act for out-of-*
14 *state parolee supervision; and*

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

33 *(5) be subject to searches of the defendant's person, effects, vehicle,*
34 *residence and property by court service officers, community correctional*
35 *services officers and other law enforcement officers based on reasonable*
36 *suspicion of the defendant violating conditions of probation or criminal*
37 *activity; and*

38 *(6) be subject to random, but reasonable, tests for drug and alcohol*
39 *consumption as ordered by a court services officer or community*
40 *correctional services officer.*

41 *(d) There is hereby established in the state treasury the correctional*
42 *supervision fund. All moneys credited to the correctional supervision fund*
43 *shall be used for the implementation of and training for use of a statewide,*

1 *mandatory, standardized risk assessment tool or instrument as specified by*
2 *the Kansas sentencing commission, pursuant to K.S.A. 75-5291, and*
3 *amendments thereto, and for evidence-based offender supervision*
4 *programs by judicial branch personnel. If all expenditures for the program*
5 *have been paid and moneys remain in the correctional supervision fund*
6 *for a fiscal year, remaining moneys may be expended from the correctional*
7 *supervision fund to support offender supervision by court services officers.*
8 *All expenditures from the correctional supervision fund shall be made in*
9 *accordance with appropriation acts upon warrants of the director of*
10 *accounts and reports issued pursuant to vouchers approved by the chief*
11 *justice of the Kansas supreme court or by a person or persons designated*
12 *by the chief justice.*

13 *{New Sec. 3. (a) An individual who has been adjudicated as a*
14 *mentally ill person subject to involuntary commitment for care and*
15 *treatment, or who is prohibited from shipping, transporting, possessing*
16 *or receiving firearms or ammunition by subsection (d)(4) or (g)(4) of 18*
17 *U.S.C. § 922, may petition for relief of disabilities for the purpose of*
18 *firearm prohibitions imposed under state and federal laws.*

19 *(b) A petitioner shall submit such petition to a court of competent*
20 *jurisdiction within this state.*

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

23 *(d) The court shall consider the petition for relief, in accordance*
24 *with the principles of due process. Such petitioner shall submit, and*
25 *such court shall receive and consider:*

26 *(1) The circumstances regarding the firearm disability imposed by*
27 *federal law;*

28 *(2) such petitioner's mental health records;*

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

30 *(4) such petitioner's reputation, developed through character*
31 *witness statements, testimony or other character evidence.*

32 *(e) The court shall grant relief only if such court determines there*
33 *is clear and convincing evidence that:*

34 *(1) The petitioner will not be likely to act in a manner dangerous to*
35 *public safety; and*

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

37 *(f) If the court denies the petition for relief, the petitioner may*
38 *petition a court of proper jurisdiction for a de novo judicial review of the*
39 *court's decision to deny such petition.*

40 *(g) Documentation of a granted petition shall be submitted to the*
41 *Kansas bureau of investigation. The Kansas bureau of investigation*
42 *shall immediately cause such order to be entered into the appropriate*
43 *state and federal databases.*

1 ***(h) As used in this section:***

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

5 ***(2) "Due process" requires that:***

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

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

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

13 ***Sec. 4. K.S.A. 2010 Supp. 12-4516a is hereby amended to read as***
14 ***follows: 12-4516a. (a) Any person who has been arrested on a violation***
15 ***of a city ordinance of this state may petition the court for the***
16 ***expungement of such arrest record.***

17 ***(b) When a petition for expungement is filed, the court shall set a***
18 ***date for hearing on such petition and shall cause notice of such hearing***
19 ***to be given to the prosecuting attorney and the arresting law***
20 ***enforcement agency. When a petition for expungement is filed, the***
21 ***official court file shall be separated from the other records of the court,***
22 ***and shall be disclosed only to a judge of the court and members of the***
23 ***staff of the court designated by a judge of the district court, the***
24 ***prosecuting attorney, the arresting law enforcement agency, or any other***
25 ***person when authorized by a court order, subject to any conditions***
26 ***imposed by the order. The petition shall state: (1) The petitioner's full***
27 ***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***
40 ***into 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*
- 3 *arrest;*
- 4 (3) *the petitioner was found not guilty in court proceedings; or*
- 5 (4) *the expungement would be in the best interests of justice and*
- 6 *(A) charges have been dismissed; or (B) no charges have been or are*
- 7 *likely to be filed.*
- 8 (d) *When the court has ordered expungement of an arrest record*
- 9 *and subsequent court proceedings, if any, the order shall state the*
- 10 *information required to be stated in the petition and shall state the*
- 11 *grounds for expungement under subsection (c). The clerk of the court*
- 12 *shall send a certified copy of the order to the Kansas bureau of*
- 13 *investigation which shall notify the federal bureau of investigation, the*
- 14 *secretary of corrections and any other criminal justice agency which*
- 15 *may have a record of the arrest. If an order of expungement is entered,*
- 16 *the petitioner shall be treated as not having been arrested.*
- 17 (e) *If the ground for expungement is as provided in subsection (c)*
- 18 *(4), the court shall determine whether, in the interest of public welfare,*
- 19 *the records should be available for any of the following purposes:*
- 20 (1) *In any application for employment as a detective with a private*
- 21 *detective agency, as defined by K.S.A. 75-7b01, and amendments*
- 22 *thereto; as security personnel with a private patrol operator, as defined*
- 23 *by K.S.A. 75-7b01, and amendments thereto; or with an institution, as*
- 24 *defined in K.S.A. 76-12a01, and amendments thereto, of the department*
- 25 *of social and rehabilitation services;*
- 26 (2) *in any application for admission, or for an order of*
- 27 *reinstatement, to the practice of law in this state;*
- 28 (3) *to aid in determining the petitioner's qualifications for*
- 29 *employment with the Kansas lottery or for work in sensitive areas within*
- 30 *the Kansas lottery as deemed appropriate by the executive director of the*
- 31 *Kansas lottery;*
- 32 (4) *to aid in determining the petitioner's qualifications for executive*
- 33 *director of the Kansas racing commission, for employment with the*
- 34 *commission or for work in sensitive areas in parimutuel racing as*
- 35 *deemed appropriate by the executive director of the commission, or to*
- 36 *aid in determining qualifications for licensure or renewal of licensure by*
- 37 *the commission;*
- 38 (5) *in any application for a commercial driver's license under*
- 39 *K.S.A. 8-2,125 through 8-2,142, and amendments thereto;*
- 40 (6) *to aid in determining the petitioner's qualifications to be an*
- 41 *employee of the state gaming agency;*
- 42 (7) *to aid in determining the petitioner's qualifications to be an*
- 43 *employee of a tribal gaming commission or to hold a license issued*

1 *pursuant to a tribal-state gaming compact; or*

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

3 *(f) The court shall make all expunged records and related*
4 *information in such court's possession, created prior to, on and after July*
5 *1, 2011, available to the Kansas bureau of investigation for the purposes*
6 *of:*

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

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

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

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

24 *Sec. 5. K.S.A. 2010 Supp. 22-2410 is hereby amended to read as*
25 *follows: 22-2410. (a) Any person who has been arrested in this state may*
26 *petition the district court for the expungement of such arrest record.*

27 *(b) When a petition for expungement is filed, the court shall set a*
28 *date for hearing on such petition and shall cause notice of such hearing*
29 *to be given to the prosecuting attorney and the arresting law*
30 *enforcement agency. When a petition for expungement is filed, the*
31 *official court file shall be separated from the other records of the court,*
32 *and shall be disclosed only to a judge of the court and members of the*
33 *staff of the court designated by a judge of the district court, the*
34 *prosecuting attorney, the arresting law enforcement agency, or any other*
35 *person when authorized by a court order, subject to any conditions*
36 *imposed by the order. Except as otherwise provided by law, a petition for*
37 *expungement shall be accompanied by a docket fee in the amount of*
38 *\$100. Except as provided further, the docket fee established in this*
39 *section shall be the only fee collected or moneys in the nature of a fee*
40 *collected for the docket fee. Such fee shall only be established by an act*
41 *of the legislature and no other authority is established by law or*
42 *otherwise to collect a fee. On and after the effective date of this act*
43 *through June 30, 2011, the supreme court may impose an additional*

1 *charge, not to exceed \$15 per docket fee, to fund the costs of nonjudicial*
2 *personnel. The petition shall state:*

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

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

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

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

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

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

- 38 (1) *In any application for employment as a detective with a private*
39 *detective agency, as defined in K.S.A. 75-7b01, and amendments thereto;*
40 *as security personnel with a private patrol operator, as defined by K.S.A.*
41 *75-7b01, and amendments thereto; or with an institution, as defined in*
42 *K.S.A. 76-12a01, and amendments thereto, of the department of social*
43 *and rehabilitation services;*

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

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

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

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

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

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

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

21 ***(f) The court shall make all expunged records and related***
22 ***information in such court's possession, created prior to, on and after July***
23 ***1, 2011, available to the Kansas bureau of investigation for the purposes***
24 ***of:***

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

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

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

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

42 ***(i) The docket fee collected at the time the petition for***
43 ***expungement is filed shall be disbursed in accordance with K.S.A. 20-***

1 362, and amendments thereto.

2 Sec. 6. K.S.A. 22-4701 is hereby amended to read as follows: 22-
3 4701. As used in this act, unless the context clearly requires otherwise:

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

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

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

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

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

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

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

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

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

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

37 (4) the Kansas sentencing commission;

38 (5) the Kansas parole board; and

39 (6) the juvenile justice authority.

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

1 (e) "Director" means the director of the Kansas bureau of
2 investigation.

3 (f) "Disseminate" means to transmit criminal history record
4 information in any oral or written form. The term does not include:

5 (1) The transmittal of such information within a criminal justice
6 agency;

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

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

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

13 Sec. 7. K.S.A. 22-4705 is hereby amended to read as follows: 22-
14 4705. (a) The following events are reportable events under this act:

15 (1) Issuance of an arrest warrant;

16 (2) an arrest;

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

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

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

21 (6) imposition of a sentence;

22 (7) commitment to a correctional facility, whether state or locally
23 operated;

24 (8) release from detention or confinement;

25 (9) an escape from confinement;

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

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

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

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

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

42 (c) Except as otherwise provided by this subsection, every criminal
43 justice agency shall report criminal history record information, whether

1 *collected manually or by means of an automated system, to the central*
2 *repository, in accordance with rules and regulations adopted pursuant to*
3 *this act. A criminal justice agency shall report to the central repository*
4 *those reportable events involving a violation of a county resolution or*
5 *city ordinance only when required by rules and regulations adopted by*
6 *the director.*

7 *(d) Reporting methods may include:*

8 *(1) Submittal of criminal history record information by a criminal*
9 *justice agency directly to the central repository;*

10 *(2) if the information can readily be collected and reported through*
11 *the court system, submittal to the central repository by the administrative*
12 *office of the courts; or*

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

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

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

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

27 **Sec. 8. K.S.A. 2010 Supp. 38-2312 is hereby amended to read as**
28 **follows: 38-2312. (a) Except as provided in subsection (b) and (c), any**
29 **records or files specified in this code concerning a juvenile may be**
30 **expunged upon application to a judge of the court of the county in**
31 **which the records or files are maintained. The application for**
32 **expungement may be made by the juvenile, if 18 years of age or older or,**
33 **if the juvenile is less than 18 years of age, by the juvenile's parent or**
34 **next friend.**

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

1 **3404**, prior to its repeal, or section 40 of chapter 136 of the 2010 Session
2 **Laws of Kansas, and amendments thereto, involuntary manslaughter,**
3 **K.S.A. 21-3439**, prior to its repeal, or section 36 of chapter 136 of the
4 **2010 Session Laws of Kansas, and amendments thereto, capital murder,**
5 **K.S.A. 21-3442**, prior to its repeal, ~~and amendments thereto, involuntary~~
6 **manslaughter while driving under the influence of alcohol or drugs,**
7 **K.S.A. 21-3502**, prior to its repeal, or section 67 of chapter 136 of the
8 **2010 Session Laws of Kansas, and amendments thereto, rape, K.S.A. 21-**
9 **3503**, prior to its repeal, or subsection (a) of section 70 of chapter 136 of
10 **the 2010 Session Laws of Kansas, and amendments thereto, indecent**
11 **liberties with a child, K.S.A. 21-3504**, prior to its repeal, or subsection (b)
12 **of section 70 of chapter 136 of the 2010 Session Laws of Kansas, and**
13 **amendments thereto, aggravated indecent liberties with a child, K.S.A.**
14 **21-3506**, prior to its repeal, or subsection (b) of section 68 of chapter 136
15 **of the 2010 Session Laws of Kansas, and amendments thereto,**
16 **aggravated criminal sodomy, K.S.A. 21-3510**, prior to its repeal, or
17 **subsection (a) of section 72 of chapter 136 of the 2010 Session Laws of**
18 **Kansas, and amendments thereto, indecent solicitation of a child, K.S.A.**
19 **21-3511**, prior to its repeal, or subsection (a) of section 72 of chapter 136
20 **of the 2010 Session Laws of Kansas, and amendments thereto,**
21 **aggravated indecent solicitation of a child, K.S.A. 21-3516**, prior to its
22 **repeal, or section 74 of chapter 136 of the 2010 Session Laws of Kansas,**
23 **and amendments thereto, sexual exploitation, K.S.A. 21-3603**, prior to its
24 **repeal, or subsection (b) of section 81 of chapter 136 of the 2010 Session**
25 **Laws of Kansas, and amendments thereto, aggravated incest, K.S.A. 21-**
26 **3608**, prior to its repeal, or subsection (a) of section 78 of chapter 136 of
27 **the 2010 Session Laws of Kansas, and amendments thereto, endangering**
28 **a child, K.S.A. 21-3609**, prior to its repeal, or section 79 of chapter 136 of
29 **the 2010 Session Laws of Kansas, and amendments thereto, abuse of a**
30 **child, or which would constitute an attempt to commit a violation of any**
31 **of the offenses specified in this subsection.**

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

38 ~~(e)~~(d) When a petition for expungement is filed, the court shall set
39 a date for a hearing on the petition and shall give notice thereof to the
40 county or district attorney. The petition shall state: (1) The juvenile's full
41 name; (2) the full name of the juvenile as reflected in the court record, if
42 different than (1); (3) the juvenile's sex and date of birth; (4) the offense
43 for which the juvenile was adjudicated; (5) the date of the trial; and (6)

1 *the identity of the trial court. Except as otherwise provided by law, a*
 2 *petition for expungement shall be accompanied by a docket fee in the*
 3 *amount of \$100. On and after the effective date of this act through June*
 4 *30, 2011, the supreme court may impose a charge, not to exceed \$15 per*
 5 *case, to fund the costs of non-judicial personnel. All petitions for*
 6 *expungement shall be docketed in the original action. Any person who*
 7 *may have relevant information about the petitioner may testify at the*
 8 *hearing. The court may inquire into the background of the petitioner.*

9 ~~(d)~~ (e) (1) *After hearing, the court shall order the expungement of*
 10 *the records and files if the court finds that:*

11 (A) *The juvenile has reached 23 years of age or that two years have*
 12 *elapsed since the final discharge;*

13 (B) *since the final discharge of the juvenile, the juvenile has not*
 14 *been convicted of a felony or of a misdemeanor other than a traffic*
 15 *offense or adjudicated as a juvenile offender under the revised Kansas*
 16 *juvenile justice code and no proceedings are pending seeking such a*
 17 *conviction or adjudication; and*

18 (C) *the circumstances and behavior of the petitioner warrant*
 19 *expungement.*

20 (2) *The court may require that all court costs, fees and restitution*
 21 *shall be paid.*

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

34 ~~(f)~~ (g) *A certified—Copies of any order made pursuant to*
 35 *subsection (a) or ~~(e)~~ (d) shall be sent to each public officer and agency in*
 36 *the county having possession of any the Kansas bureau of investigation,*
 37 *which shall notify every juvenile or criminal justice agency which may*
 38 *possess records or files ordered to be expunged. If the officer or agency*
 39 *fails to comply with the order within a reasonable time after its receipt,*
 40 *the officer or such agency may be adjudged in contempt of court and*
 41 *punished accordingly.*

42 ~~(g)~~ (h) *The court shall inform any juvenile who has been*
 43 *adjudicated a juvenile offender of the provisions of this section.*

1 ~~(h)~~ (i) *Nothing in this section shall be construed to prohibit the*
2 *maintenance of information relating to an offense after records or files*
3 *concerning the offense have been expunged if the information is kept in*
4 *a manner that does not enable identification of the juvenile.*

5 ~~(i)~~ (j) *Nothing in this section shall be construed to permit or require*
6 *expungement of files or records related to a child support order*
7 *registered pursuant to the revised Kansas juvenile justice code.*

8 ~~(j)~~ (k) *Whenever the records or files of any adjudication have been*
9 *expunged under the provisions of this section, the custodian of the*
10 *records or files of adjudication relating to that offense shall not disclose*
11 *the existence of such records or files, except when requested by:*

12 (1) *The person whose record was expunged;*

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

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

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

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

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

31 (7) *the governor or the Kansas racing commission, or a designee of*
32 *the commission, and the request is accompanied by a statement that the*
33 *request is being made to aid in determining qualifications for executive*
34 *director of the commission, for employment with the commission, for*
35 *work in sensitive areas in parimutuel racing as deemed appropriate by*
36 *the executive director of the commission or for licensure, renewal of*
37 *licensure or continued licensure by the commission; or*

38 (8) *the Kansas sentencing commission; or*

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

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

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

1 investigation, in connection with the national instant criminal background
2 check system, to determine a person's qualification to possess a firearm.

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

5 **Sec. 9. Section 254 of chapter 136 of the 2010 Session Laws of**
6 **Kansas is hereby amended to read as follows: Sec. 254. (a) (1) Except as**
7 **provided in subsections (b) and ~~(e)~~, (c) and (d), any person convicted in**
8 **this state of a traffic infraction, cigarette or tobacco infraction,**
9 **misdemeanor or a class D or E felony, or for crimes committed on or**
10 **after July 1, 1993, nondrug crimes ranked in severity levels 6 through 10**
11 **or any felony ranked in severity level 4 of the drug grid, may petition the**
12 **convicting court for the expungement of such conviction or related**
13 **arrest records if three or more years have elapsed since the person: (A)**
14 **Satisfied the sentence imposed; or (B) was discharged from probation, a**
15 **community correctional services program, parole, postrelease**
16 **supervision, conditional release or a suspended sentence.**

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

22 (b) Except as provided in subsection (c) and (d), no person may
23 petition for expungement until five or more years have elapsed since the
24 person satisfied the sentence imposed, the terms of a diversion
25 agreement or was discharged from probation, a community correctional
26 services program, parole, postrelease supervision, conditional release or
27 a suspended sentence, if such person was convicted of a class A, B or C
28 felony, or for crimes committed on or after July 1, 1993, if convicted of
29 an off-grid felony or any nondrug crime ranked in severity levels 1
30 through 5 or any felony ranked in severity levels 1 through 3 of the drug
31 grid, or:

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

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

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

- 1 ***(4) violating the provisions of the fifth clause of K.S.A. 8-142, and***
2 ***amendments thereto, relating to fraudulent applications or violating the***
3 ***provisions of a law of another state which is in substantial conformity***
4 ***with that statute;***
- 5 ***(5) any crime punishable as a felony wherein a motor vehicle was***
6 ***used in the perpetration of such crime;***
- 7 ***(6) failing to stop at the scene of an accident and perform the duties***
8 ***required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto,***
9 ***or required by a law of another state which is in substantial conformity***
10 ***with those statutes;***
- 11 ***(7) violating the provisions of K.S.A. 40-3104, and amendments***
12 ***thereto, relating to motor vehicle liability insurance coverage; or***
- 13 ***(8) a violation of K.S.A. 21-3405b, prior to its repeal.***
- 14 ***(c) There shall be no expungement of convictions for the following***
15 ***offenses or of convictions for an attempt to commit any of the following***
16 ***offenses:***
- 17 ***(1) Rape as defined in K.S.A. 21-3502, prior to its repeal, or section***
18 ***67 of chapter 136 of the 2010 Session Laws of Kansas, and amendments***
19 ***thereto;***
- 20 ***(2) indecent liberties with a child or aggravated indecent liberties***
21 ***with a child as defined in K.S.A. 21-3503 or 21-3504, prior to their***
22 ***repeal, or section 70 of chapter 136 of the 2010 Session Laws of Kansas,***
23 ***and amendments thereto;***
- 24 ***(3) criminal sodomy as defined in subsection (a)(2) or (a)(3) of***
25 ***K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) or (a)(4) of***
26 ***section 68 of chapter 136 of the 2010 Session Laws of Kansas, and***
27 ***amendments thereto;***
- 28 ***(4) aggravated criminal sodomy as defined in K.S.A. 21-3506, prior***
29 ***to its repeal, or section 68 of chapter 136 of the 2010 Session Laws of***
30 ***Kansas, and amendments thereto;***
- 31 ***(5) indecent solicitation of a child or aggravated indecent***
32 ***solicitation of a child as defined in K.S.A. 21-3510 or 21-3511, prior to***
33 ***their repeal, or section 72 of chapter 136 of the 2010 Session Laws of***
34 ***Kansas, and amendments thereto;***
- 35 ***(6) sexual exploitation of a child as defined in K.S.A. 21-3516, prior***
36 ***to its repeal, or section 74 of chapter 136 of the 2010 Session Laws of***
37 ***Kansas, and amendments thereto;***
- 38 ***(7) aggravated incest as defined in K.S.A. 21-3603, prior to its***
39 ***repeal, or section 81 of chapter 136 of the 2010 Session Laws of Kansas,***
40 ***and amendments thereto;***
- 41 ***(8) endangering a child or aggravated endangering a child as***
42 ***defined in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or section 78***
43 ***of chapter 136 of the 2010 Session Laws of Kansas, and amendments***

1 *thereto;*

2 **(9) abuse of a child as defined in K.S.A. 21-3609, prior to its repeal,**
3 **or section 79 of chapter 136 of the 2010 Session Laws of Kansas, and**
4 **amendments thereto;**

5 **(10) capital murder as defined in K.S.A. 21-3439, prior to its repeal,**
6 **or section 36 of chapter 136 of the 2010 Session Laws of Kansas, and**
7 **amendments thereto;**

8 **(11) murder in the first degree as defined in K.S.A. 21-3401, prior to**
9 **its repeal, or section 37 of chapter 136 of the 2010 Session Laws of**
10 **Kansas, and amendments thereto;**

11 **(12) murder in the second degree as defined in K.S.A. 21-3402,**
12 **prior to its repeal, or section 38 of chapter 136 of the 2010 Session Laws**
13 **of Kansas, and amendments thereto;**

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

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

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

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

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

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

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

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

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

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

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

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

26 (⊖) (f) *At the hearing on the petition, the court shall order the*
27 *petitioner's arrest record, conviction or diversion expunged if the court*
28 *finds that:*

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

32 (2) *the circumstances and behavior of the petitioner warrant the*
33 *expungement;*

34 (3) *the expungement is consistent with the public welfare.*

35 (⊕) (g) *When the court has ordered an arrest record, conviction or*
36 *diversion expunged, the order of expungement shall state the*
37 *information required to be contained in the petition. The clerk of the*
38 *court shall send a certified copy of the order of expungement to the*
39 *Kansas bureau of investigation which shall notify the federal bureau of*
40 *investigation, the secretary of corrections and any other criminal justice*
41 *agency which may have a record of the arrest, conviction or diversion.*
42 *After the order of expungement is entered, the petitioner shall be treated*
43 *as not having been arrested, convicted or diverted of the crime, except*

1 *that:*

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

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

8 *(A) In any application for licensure as a private detective, private*
9 *detective agency, certification as a firearms trainer pursuant to K.S.A.*
10 *20092010 Supp. 75-7b21, and amendments thereto, or employment as a*
11 *detective with a private detective agency, as defined by K.S.A. 75-7b01,*
12 *and amendments thereto; as security personnel with a private patrol*
13 *operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with*
14 *an institution, as defined in K.S.A. 76-12a01, and amendments thereto,*
15 *of the department of social and rehabilitation services;*

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

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

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

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

33 *(F) upon application for a commercial driver's license under K.S.A.*
34 *8-2,125 through 8-2,142, and amendments thereto;*

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

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

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

43 *(J) in any application for employment as a law enforcement officer*

1 *as defined in K.S.A. 22-2202 or 74-5602, and amendments thereto; or*

2 *(K) for applications received on and after July 1, 2006, to aid in*
 3 *determining the petitioner's qualifications for a license to carry a*
 4 *concealed weapon pursuant to the personal and family protection act,*
 5 *K.S.A. ~~2009~~2010 Supp. 75-7c01 et seq., and amendments thereto;*

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

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

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

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

22 ~~(h)~~*(i) Subject to the disclosures required pursuant to subsection ~~(h)~~*
 23 *(g), in any application for employment, license or other civil right or*
 24 *privilege, or any appearance as a witness, a person whose arrest records,*
 25 *conviction or diversion of a crime has been expunged under this statute*
 26 *may state that such person has never been arrested, convicted or diverted*
 27 *of such crime, but the expungement of a felony conviction does not*
 28 *relieve an individual of complying with any state or federal law relating*
 29 *to the use or possession of firearms by persons convicted of a felony.*

30 ~~(i)~~*(j) Whenever the record of any arrest, conviction or diversion*
 31 *has been expunged under the provisions of this section or under the*
 32 *provisions of any other existing or former statute, the custodian of the*
 33 *records of arrest, conviction, diversion and incarceration relating to that*
 34 *crime shall not disclose the existence of such records, except when*
 35 *requested by:*

36 *(1) The person whose record was expunged;*

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

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

43 *(4) the secretary of social and rehabilitation services, or a designee*

1 *of the secretary, for the purpose of obtaining information relating to*
2 *employment in an institution, as defined in K.S.A. 76-12a01, and*
3 *amendments thereto, of the department of social and rehabilitation*
4 *services of any person whose record has been expunged;*

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

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

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

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

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

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

38 *(11) the Kansas sentencing commission;*

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

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

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

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

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

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

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

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

27 ***†(k) The provisions of subsection (j)(17) shall apply to records***
28 ***created prior to, on and after July 1, 2011.}***

29 ~~Sec. 3-10. K.S.A. 2010 Supp. 21-4610a, 22-3717 and 22-3717c and~~
30 ~~section 247-22-4701 and 22-4705 and K.S.A. 2010 Supp. 12-4516a, 21-~~
31 ~~4610a, 21-4619, 22-2410, 22-3717, 22-3717c and 38-2312 and sections~~
32 ~~247 and 254} of chapter 136 of the 2010 Session Laws of Kansas are~~
33 ~~hereby repealed.~~

34 ***Sec. 4-11. This act shall take effect and be in force from and after its***
35 ***publication in the statute book.***