

HOUSE BILL No. 2662

By Committee on Federal and State Affairs

2-12

1 AN ACT concerning crimes and punishment; relating to expungement of
2 certain convictions; amending K.S.A. 2013 Supp. 21-6614 and
3 repealing the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2013 Supp. 21-6614 is hereby amended to read as
7 follows: 21-6614. (a) (1) Except as provided in subsections (b), (c), (d);
8 *and (e) and (f)*, any person convicted in this state of *a violation of K.S.A.*
9 *8-1567, and amendments thereto*, a traffic infraction, cigarette or tobacco
10 infraction, misdemeanor or a class D or E felony, or for crimes committed
11 on or after July 1, 1993, nondrug crimes ranked in severity levels 6
12 through 10, or for crimes committed on or after July 1, 1993, but prior to
13 July 1, 2012, any felony ranked in severity level 4 of the drug grid, or for
14 crimes committed on or after July 1, 2012, any felony ranked in severity
15 level 5 of the drug grid may petition the convicting court for the
16 expungement of such conviction or related arrest records if three or more
17 years have elapsed since the person: (A) Satisfied the sentence imposed; or
18 (B) was discharged from probation, a community correctional services
19 program, parole, postrelease supervision, conditional release or a
20 suspended sentence.

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

26 (b) Any person convicted of prostitution, as defined in K.S.A. 21-
27 3512, prior to its repeal, convicted of a violation of K.S.A. 2013 Supp. 21-
28 6419, and amendments thereto, or who entered into a diversion agreement
29 in lieu of further criminal proceedings for such violation, may petition the
30 convicting court for the expungement of such conviction or diversion
31 agreement and related arrest records if:

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

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

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

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

18 (1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its
19 repeal, or K.S.A. 2013 Supp. 21-5406, and amendments thereto, or as
20 prohibited by any law of another state which is in substantial conformity
21 with that statute;

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

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

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

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

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

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

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

43 ~~(d) No person may petition for expungement until 10 or more years~~

1 ~~have elapsed since the person satisfied the sentence imposed or the terms~~
2 ~~of a diversion agreement or was discharged from probation, a community~~
3 ~~correctional services program, parole, postrelease supervision, conditional~~
4 ~~release or a suspended sentence, if such person was convicted of a~~
5 ~~violation of K.S.A. 8-1567, and amendments thereto, including any~~
6 ~~diversion for such violation.~~

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

10 (1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.
11 2013 Supp. 21-5503, and amendments thereto;

12 (2) indecent liberties with a child or aggravated indecent liberties
13 with a child, as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal,
14 or K.S.A. 2013 Supp. 21-5506, and amendments thereto;

15 (3) criminal sodomy, as defined in subsection (a)(2) or (a)(3) of
16 K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) or (a)(4) of K.S.A.
17 2013 Supp. 21-5504, and amendments thereto;

18 (4) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior
19 to its repeal, or K.S.A. 2013 Supp. 21-5504, and amendments thereto;

20 (5) indecent solicitation of a child or aggravated indecent solicitation
21 of a child, as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal,
22 or K.S.A. 2013 Supp. 21-5508, and amendments thereto;

23 (6) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior
24 to its repeal, or K.S.A. 2013 Supp. 21-5510, and amendments thereto;

25 (7) aggravated incest, as defined in K.S.A. 21-3603, prior to its
26 repeal, or K.S.A. 2013 Supp. 21-5604, and amendments thereto;

27 (8) endangering a child or aggravated endangering a child, as defined
28 in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2013 Supp.
29 21-5601, and amendments thereto;

30 (9) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal,
31 or K.S.A. 2013 Supp. 21-5602, and amendments thereto;

32 (10) capital murder, as defined in K.S.A. 21-3439, prior to its repeal,
33 or K.S.A. 2013 Supp. 21-5401, and amendments thereto;

34 (11) murder in the first degree, as defined in K.S.A. 21-3401, prior to
35 its repeal, or K.S.A. 2013 Supp. 21-5402, and amendments thereto;

36 (12) murder in the second degree, as defined in K.S.A. 21-3402, prior
37 to its repeal, or K.S.A. 2013 Supp. 21-5403, and amendments thereto;

38 (13) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to
39 its repeal, or K.S.A. 2013 Supp. 21-5404, and amendments thereto;

40 (14) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to
41 its repeal, or K.S.A. 2013 Supp. 21-5405, and amendments thereto;

42 (15) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal,
43 or K.S.A. 2013 Supp. 21-5505, and amendments thereto, when the victim

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

2 (16) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to
3 its repeal, or K.S.A. 2013 Supp. 21-5505, and amendments thereto;

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

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

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

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

18 (A) Defendant's full name;

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

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

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

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

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

27 (2) Except as otherwise provided by law, a petition for expungement
28 shall be accompanied by a docket fee in the amount of \$100. On and after
29 April 12, 2012, through June 30, 2013, the supreme court may impose a
30 charge, not to exceed \$19 per case, to fund the costs of non-judicial
31 personnel. The charge established in this section shall be the only fee
32 collected or moneys in the nature of a fee collected for the case. Such
33 charge shall only be established by an act of the legislature and no other
34 authority is established by law or otherwise to collect a fee.

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

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

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

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

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

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

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

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

21 (A) In any application for licensure as a private detective, private
22 detective agency, certification as a firearms trainer pursuant to K.S.A.
23 2013 Supp. 75-7b21, and amendments thereto, or employment as a
24 detective with a private detective agency, as defined by K.S.A. 75-7b01,
25 and amendments thereto; as security personnel with a private patrol
26 operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with
27 an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of
28 the department for children and families;

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

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

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

41 (E) to aid in determining the petitioner's qualifications for the
42 following under the Kansas expanded lottery act: (i) Lottery gaming
43 facility manager or prospective manager, racetrack gaming facility

1 manager or prospective manager, licensee or certificate holder; or (ii) an
2 officer, director, employee, owner, agent or contractor thereof;

3 (F) upon application for a commercial driver's license under K.S.A.
4 8-2,125 through 8-2,142, and amendments thereto;

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

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

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

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

15 (K) for applications received on and after July 1, 2006, to aid in
16 determining the petitioner's qualifications for a license to carry a concealed
17 weapon pursuant to the personal and family protection act, K.S.A. 2013
18 Supp. 75-7c01 et seq., and amendments thereto;

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

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

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

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

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

41 (2) Notwithstanding the provisions of subsection ~~(k)-(t)~~ (j)(1), and
42 except as provided in subsection (a)(3)(A) of K.S.A. 2013 Supp. 21-6304,
43 and amendments thereto, the expungement of a prior felony conviction

1 does not relieve the individual of complying with any state or federal law
2 relating to the use, shipment, transportation, receipt or possession of
3 firearms by persons previously convicted of a felony.

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

9 (1) The person whose record was expunged;

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

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

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

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

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

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

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

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

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

8 (11) the Kansas sentencing commission;

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

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

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

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

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

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

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

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

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

41 Sec. 2. K.S.A. 2013 Supp. 21-6614 is hereby repealed.

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