

**REPORT OF THE JUDICIAL COUNCIL  
CRIMINAL LAW ADVISORY COMMITTEE ON  
19 S.B. 154 and 19 S.B. 227**

**December 13, 2019**

On March 28, 2018, Senator Richard Wilborn asked the Judicial Council to study 2019 S.B. 154 and S.B. 227. S.B. 154 proposed to implement a separate procedure for a human trafficking victim to petition to set aside certain convictions or diversion agreements and related arrest records. S.B. 227 proposed changes to address the compulsion defense, expungement, and offender registration requirements for victims of human trafficking who themselves engage in criminal conduct as a result of the offenses against them. On June 7, 2019, the Judicial Council referred the study to the Criminal Law Advisory Committee with the addition of three ad hoc members with expertise on the subject of human trafficking (the Committee).

**COMMITTEE MEMBERSHIP**

The members of the Judicial Council Criminal Law Advisory Committee are:

**Victor Braden, Chair**, Deputy Attorney General; Topeka

**Natalie Chalmers**, Assistant Solicitor General; Topeka

**Randall Hodgkinson**, Kansas Appellate Defender Office & Visiting Assistant Professor of Law at Washburn University School of Law; Topeka

**Sal Intagliata**, Member at Monnat & Spurrier, Chartered; Wichita

**Christopher M. Joseph**, Partner at Joseph Hollander & Craft, LLC; Topeka

**Ed Klumpp**, Chief of Police-Retired, Topeka Police Department; Topeka

**Steven L. Opat**, Geary County Counselor; Junction City

**Hon. Cheryl A. Rios**, District Court Judge in the Third Judicial District; Topeka

**Ann Sagan**, Assistant Federal Public Defender, Federal Public Defender District of Kansas; Topeka

**Ann Swegle**, Sedgwick County Deputy District Attorney; Wichita

**Kirk Thompson**, Director of the Kansas Bureau of Investigation; Topeka

**Rep. John Wheeler**, Kansas House of Representatives, District 123; Garden City

**Ronald Wurtz**, Retired Public Defender (Federal and Kansas); Topeka

**Prof. Corey Rayburn Yung**, KU School of Law Professor; Lawrence

**Ad Hoc Members:**

**Lucy Bloom**, Executive Director of Veronica’s Voice; Kansas City

**Dr. Karen Countryman-Roswurm**, Associate Professor and Executive Director of the Center for Combating Human Trafficking; Wichita

**Nate Van Emon**, Partner at Stinson, LLP; Kansas City

**METHOD OF STUDY**

The Committee met three times in person and once via conference call between September and November 2019. In preparation for the discussion of S.B. 227 and S.B. 154, the Committee reviewed the study request, the bills and the materials listed on page 12. In addition, the Committee invited Kate Mogulescu, Assistant Professor of Clinical Law at Brooklyn Law School and the Director of the ABA’s Survivor Reentry Project, to attend its first meeting to give the Committee background on the issues and explain how states across the country have addressed these issues. A copy of the study request and related bills is on page 28.

**DISCUSSION**

Human trafficking victims are often required by their trafficker to commit a wide variety of crimes. The most commonly thought of crime committed by a sex trafficking victim is the crime of selling sexual relations; however, both sex and labor trafficking victims are often charged with crimes involving theft, drug sales, drug use, fraud, or truancy. It is the victim who is charged and convicted of the crime, even when the crime was committed as a direct result of

the victim's trafficking situation.<sup>1</sup> Many argue that trafficking victims should be recognized and treated as victims, not criminals.<sup>2</sup>

### *2019 S.B. 154 - Setting Aside or Vacatur of a Conviction*

S.B. 154 proposed to create a new procedure that would allow any conviction or diversion to be "set aside" if the conviction concerned acts committed by the person as a result of being a victim of human trafficking. The court could set aside a conviction or diversion if the court found that the petitioner was a victim of human trafficking, and the petitioner could prove by a preponderance of the evidence that the petitioner was acting under coercion caused by the act of another at the time of the offense. The order setting aside the conviction would nullify the conviction or diversion agreement, deem the conviction or diversion to have been vacated due to a substantive defect in the underlying criminal proceedings, and remove all civil disabilities and disqualifications imposed as a result of the conviction or diversion.

If the court sets aside the conviction or diversion, all related arrest records would be expunged and purged from all applicable state and federal systems. This would include the local law enforcement agency, the Kansas Bureau of Investigation, the Kansas Department of Corrections, and the state and federal criminal justice information system central repository. It would be as if the offense never occurred.

This process of setting aside a conviction is commonly referred to as vacatur. Vacatur of records does not merely erase the conviction or diversion in the eyes of the law. Vacatur alters the merits of the underlying record.<sup>3</sup> Advocates of a set aside or vacatur process argue that vacatur provides the best criminal record relief for victims of human trafficking because it is the

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<sup>1</sup> See Cross, *Slipping through the cracks: The dual victimization of human trafficking survivors*, 44 McGeorge L. Rev. 395 (2013).

<sup>2</sup> *Id.* See also Blizard, *Chapter 636: Catching those who fall, an affirmative defense for human trafficking victims*, 48 U. Pac. L. Rev. 631 (2017).

<sup>3</sup> Marsh, Anthony, Emerson, Mogulescu, *State report cards: Grading criminal record relief laws for survivors of human trafficking*, Polaris, American Bar Association's Survivor Reentry Project, Brooklyn Law School, University of Baltimore School of Law (2019).

criminal justice system acknowledging that the victim, because of his or her status as a victim not a perpetrator, should not have been charged with the crime in the first place. Unlike expungement, criminal records that are vacated are no longer available for disclosure to anyone.

The Committee was concerned about the complete destruction of all records relating to an incident leading to a criminal charge. If all court and law enforcement records were destroyed, it could destroy valuable information that could be used in a future investigation or prosecution of the trafficker or another perpetrator. A majority of the Committee agreed that the criminal conviction or diversion should still be available for disclosure in some instances.

A majority of the Committee recommends against the creation of a new vacatur procedure in Kansas. The majority recommends working within Kansas' already established expungement procedures and provide human trafficking victims relief from certain convictions or diversion as outlined below.

*Compensation for persons wrongfully convicted and imprisoned*

If the legislature decides to enact a set aside or vacatur procedure, the Committee recommends that the legislature carefully evaluate how the vacatur provisions would interact with K.S.A. 60-5004, which authorizes the filing of a civil action for persons wrongfully convicted and imprisoned. K.S.A. 60-5004 is broad and includes convictions that are vacated. Connecticut provides an example of a statute that excludes the vacatur of a selling sexual relations conviction on the basis of being a victim of trafficking from supporting a civil claim for compensation by the state.

The provision states:

“If the defendant proves that he or she was a victim of trafficking in persons under said section or a victim of a criminal violation of said chapter at the time of the offense, the court shall vacate any judgment of conviction and dismiss any

charges related to the offense. The vacating of a judgment of conviction and dismissal of charges pursuant to this section shall not constitute grounds for an award of compensation for wrongful arrest, prosecution, conviction or incarceration pursuant to section 54-102uu or any other provision of the general statutes.” C.G.S.A. § 54-95c.

If a human trafficking victim vacatur procedure is enacted in Kansas, the Committee recommends that the statutory framework include a provision exempting any vacatur under the new statutes from constituting grounds for claim under K.S.A. 60-5004.

### *2019 S.B. 227*

2019 S.B. 227 proposed amendments to address the availability of the compulsion defense, expungement, and offender registration requirements for victims of human trafficking who themselves engage in criminal conduct as a result of the offenses against them.

#### *Compulsion Defense*

S.B. 227 proposed to amend Kansas’s compulsion defense in K.S.A. 2018 Supp. 21-5206 by allowing a person charged with a crime, other than murder or voluntary manslaughter, to assert that the person was forced, coerced or deceived into performing the crime as a direct result of the person’s status as a victim of human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child. If the person could prove the person’s status as a victim, by a preponderance of the evidence, and the person’s criminal conduct was the direct result of the person’s status as a victim of human trafficking, then the person would not be guilty of the crime. Proponents of the amendment argued that a specific compulsion defense is necessary for human trafficking victims because the victims can rarely show that their actions were performed “under the compulsion or threat of the imminent infliction of death or great bodily harm” to the victim or the victim’s family, as required in K.S.A. 2018 Supp. 21-5206(a).

Some of the Committee including the Chair, were significantly concerned that the proposed amendments applied to any crime except murder or voluntary manslaughter. In addition, the Chair, in concert with a minority, were strongly concerned that there could be equal protection issues with creating a special version of the compulsion defense for a certain group of persons. In order to satisfy the requirements under the Equal Protection Clause, the state would be required to have a rational basis for creating an advantage for a special class of defendants. These concerns should be weighed heavily by the legislature as it considers the language of any proposed bill.

Instead of amending the compulsion defense, the Committee recommends amending the affirmative defense to the specific crime of human trafficking found in K.S.A 2019 Supp. 21-5426(e). The Committee recognized that providing an affirmative defense to the crime of human trafficking does not provide additional relief to human trafficking victims convicted of other offenses, such as burglary, robbery, or theft. However, a majority of the Committee thought it was sufficient that the current compulsion defense and self-defense defense were still available to those victims.

The Committee recommends the human trafficking affirmative defense be made available to adults, not just minors. It also recommends expanding the scope of the defense to be a defense to human trafficking or aggravated human trafficking, with the exception of when the human trafficking results in a death under K.S.A. 2019 Supp. 21-5426(b)(3). The Committee's recommend language begins on page 13.

### *Expungement*

S.B. 227 proposed to amend K.S.A. 2018 Supp. 21-6614 and 38-2312 to allow a victim of human trafficking to expunge any conviction, diversion, or juvenile adjudication if the victim could prove, by a preponderance of the evidence, that the victim was acting under coercion caused by the act of another at the time of the offense. The bill included a broad definition of coercion, as well as, created a rebuttable presumption that the person was a victim of human

trafficking if certain documentation was provided. Because the amendments to the expungement statutes would allow expungement of any offense, even those requiring the offender to register under the Kansas Offender Registration Act, the bill amended K.S.A. 2018 Supp. 21-6614(f) to allow a human trafficking victim to expunge a conviction, diversion, or adjudication despite the requirement to register. The bill also proposed an amendment to K.S.A. 2018 Supp. 22-4908 to require the offender be relieved of the requirement to register if the conviction, diversion, or adjudication was expunged based on a finding that the person committed the offense as a result of being a victim of human trafficking.

A majority of the Committee did not approve of all the amendments proposed to expungement statutes in S.B. 227. However, the Committee recommends that Kansas provide additional relief to victims of human trafficking by working within its existing expungement framework rather than creating a new vacatur or set aside process. Within the expungement framework, the Committee recommends that the statute allow victims of human trafficking to petition for expungement of any offense, an attempt, conspiracy, or criminal solicitation, except for the offenses enumerated in K.S.A. 2019 Supp. 21-6614(d)(11)-(15). Those crimes include capital murder, murder in the first or second degree, and voluntary or involuntary manslaughter.

A majority of the Committee agreed that the court should grant expungement if the court finds, by a preponderance of the evidence, that (1) the petitioner was a victim of human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child; (2) the petitioner was coerced into committing the crime as a result of such victimization; (3) the circumstances and behavior of the petitioner warrant the expungement; and (4) the expungement is consistent with the public welfare. A minority of Committee members did not want to require the petitioner to show that circumstances and behavior warrant the expungement. A minority thought the expungement should instead be based on the premise that the expungement is warranted because the state should never have charged or convicted the petitioner of the offense in the first place. A majority of the Committee agreed the

petitioner should be required to show change in the petitioner's circumstances, for example, having separated from the human trafficking scheme, or supporting himself or herself through a job other than selling sexual relations.

The Committee received feedback from lawyers and human trafficking victim advocates in California and Nebraska that supported the premise that the majority of human trafficking victims are not ready to work on expunging his or her convictions until many years after the human trafficking victim has escaped from his or her trafficker and has had time to heal and build a different life. Therefore, a majority of the Committee agreed that human trafficking victims should be required to complete all sentencing provisions of the offense and follow the same expungement timeframe requirements already set out in statute.

The Committee recommends human trafficking victims have the ability to expunge any sex offense or other offense requiring the petitioner to register as provided in the Kansas Offender Registration Act. Therefore, if a human trafficking victim is convicted of promoting the sale of sexual relations,<sup>4</sup> the human trafficking victim would be required to satisfy the sentence imposed, be discharged from any probation, postrelease supervision, conditional release or suspended sentence, and then wait three or more years before filing a petition to expunge the conviction of promoting the sale of sexual relations.<sup>5</sup> After completion of all sentencing requirements and the required 3 year waiting period, the victim would still be under the civil requirement to register on the Kansas Offender Registration. However, the Committee recommends that the statute authorize the human trafficking victim to petition for expungement of the registerable offense before the period of registration is complete. The expungement would then relieve the petitioner from the duty to register. This would require an amendment to K.S.A. 2019 Supp. 22-4908.

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<sup>4</sup> K.S.A. 21-6420.

<sup>5</sup> See. K.S.A. 21-6614(a) (setting out the requirements for the expungement of a misdemeanor).



Though not required by statute, in practice, “satisf[action of] the sentence imposed” is commonly interpreted to mean that the offender must also finish paying all fines and court costs. The Committee agreed that requiring all fines and costs be paid before expungement is a heavy burden on human trafficking victims and all indigent offenders. Often, the record of the conviction or diversion prohibits individuals from obtaining a job that would then enable the individual to pay off the outstanding fines and court costs. The Committee recommends the special expungement rules for human trafficking victims should include the following provision:

“Outstanding costs, fees, fines, or restitution shall not be a reason to deny expungement under this section if the court otherwise finds the petitioner satisfies the elements set forth in subsection (c)(2). An unwillingness, rather than inability, to pay such fees and costs can be a factor in denying expungement. Expungement shall not release the petitioner from the obligation to pay outstanding costs, fees, fines, or restitution.”

A minority of the Committee was concerned that courts would differ in their interpretation of the provision allowing an individual’s unwillingness to pay to be a factor in denying an expungement. In order to avoid abuse of this provision, a majority of the Committee thought it was necessary to clarify that only an inability to pay would warrant expungement without complete payment of costs, fees, fines, or restitution.

The Committee unanimously agreed that all offenders, not just those who are human trafficking victims, should be allowed to expunge an arrest or conviction if found to be unable to pay all costs, fees, fines, and restitution in full. Though the Committee agreed that such an amendment to Kansas’ expungement statutes should occur, the Committee thought such a recommendation was outside the scope of the assigned study.

A majority of the Committee recommends the statutes exempt human trafficking victims seeking expungement under the special rules from paying a docket fee or any other fee when he or she files the petition for expungement. The Committee recognized that many

former human trafficking victims struggle to find jobs. The Committee agreed that removing the requirement to pay a docket or other fee would remove a significant barrier to the expungement process.

A draft of how the Committee's recommendations may look within one of Kansas's expungement statutes, specifically K.S.A. 21-6614, begins on page 16. Similar amendments would need to be made to the municipal expungement rules in K.S.A. 12-4516, and the juvenile expungement rules in K.S.A. 38-2312.

### **RECOMMENDATION**

A majority of the Committee recommends against the passage of 19 S.B. 154 and S.B. 227. A majority of the Committee recommends against the creation of a new vacatur procedure in Kansas; however, if a vacatur procedure is enacted, the Committee recommends it include a provision exempting any vacatur under the new statutes from constituting grounds for a claim under K.S.A. 60-5004.

A majority of the Committee recommends against any amendments to Kansas' compulsion defense. However, if the legislature wishes to amend a defense to assist victims of human trafficking, the Committee recommends expanding the scope of the current affirmative defense to the crime of aggravated human trafficking by allowing the defense to be used by adults or minors charged with human trafficking or aggravated human trafficking, except for aggravated human trafficking that resulted in a death.

If the legislature wishes to provide additional post-conviction relief to victims of human trafficking, the Committee recommends Kansas provide it by working within the existing expungement framework. The Committee recommends the court order expungement of any crime except a select few if a petitioner can show:

- (1) the petitioner was a victim of human trafficking at the time the offense was committed,

- (2) the petitioner was coerced into committed the crime as a result of such victimization,
- (3) the circumstances and behavior of the petitioner warrant the expungement, and
- (4) the expungement is consistent with the public welfare.

The Committee recommends the statutes allow expungement for victims of human trafficking regardless of whether the petitioner has paid off all fines, fees, and court costs from the underlying offense. It also recommends the statutes exempt petitioners from paying a docketing or other fee at the time of the filing of the petition.

The Committee recommends the statutes allow victims of human trafficking to expunge any offense regardless of whether it requires the petitioner to register under the Kansas Offender Registration Act. The Committee also recommends the expungement relieve the petitioner of any future registration requirements.

## List of materials reviewed by the Committee

- Blizard, *Chapter 636: Catching those who fall, an affirmative defense for human trafficking victims*, 48 U. Pac. L. Rev. 631 (2017).
- Marsh, Anthony, Emerson, Mogulescu, *State report cards: Grading criminal record relief laws for survivors of human trafficking*, Polaris, American Bar Association's Survivor Reentry Project, Brooklyn Law School, University of Baltimore School of Law (2019).
- Comment, *Changing the Narrative: Sex Trafficking and Its Victims*, 33 BYU J. Pub. Law 321 (2019).
- Kansas's current statutes governing the compulsion defense, expungement, and offender registration.
- Uniform Law Commission, *The Uniform Act on the Prevention of and Remedies for Human Trafficking* (2013).
- Various statutes from California, Colorado, Nebraska, and Florida.
- Feedback from advocates, prosecutors, and defense attorneys in California and Nebraska about how the laws regarding affirmative defenses, expungement, and vacatur in their state has worked.
- Case law, including:
  - *M.G. v. Florida*, 260 So. 3d 1094 (Fla. Dist. Ct. App. 2018)
  - *New York v. Gonzalez*, 32 Misc. 3d 831, 927 N.Y.S.2d 567 (N.Y. Crim. Ct. 2011)
  - *New York v. P.V.*, 64 Misc. 3d 344, 100 N.Y.S.3d 496 (N.Y. Crim. Ct. 2019)

**K.S.A. 21-5426. Human trafficking; aggravated human trafficking.**

(a) Human trafficking is:

- (1) Except as provided in subsection (b)(4) and (5), the intentional recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjecting the person to involuntary servitude or forced labor;
- (2) intentionally benefitting financially or by receiving anything of value from participation in a venture that the person has reason to know has engaged in acts set forth in subsection (a)(1);
- (3) knowingly coercing employment by obtaining or maintaining labor or services that are performed or provided by another person through any of the following:
  - (A) Causing or threatening to cause physical injury to any person;
  - (B) physically restraining or threatening to physically restrain another person;
  - (C) abusing or threatening to abuse the law or legal process;
  - (D) threatening to withhold food, lodging or clothing; or
  - (E) knowingly destroying, concealing, removing, confiscating or possessing any actual or purported government identification document of another person; or
- (4) knowingly holding another person in a condition of peonage in satisfaction of a debt owed the person who is holding such other person.

(b) Aggravated human trafficking is:

- (1) Human trafficking, as defined in subsection (a), involving the commission or attempted commission of kidnapping, as defined in K.S.A. 2019 Supp. 21-5408(a), and amendments thereto;
- (2) human trafficking, as defined in subsection (a), committed in whole or in part for the purpose of the sexual gratification of the defendant or another;
- (3) human trafficking, as defined in subsection (a), resulting in a death;
- (4) recruiting, harboring, transporting, providing or obtaining, by any means, a child knowing that the child, with or without force, fraud, threat or coercion, will be used to engage in: (A) Forced labor; (B) involuntary servitude; or (C) sexual gratification of the defendant or another involving the exchange of anything of value; or
- (5) hiring a child by giving, or offering or agreeing to give, anything of value to any person, to engage in manual or other bodily contact stimulation of the genitals of any person

with the intent to arouse or gratify the sexual desires of the offender or another, sexual intercourse, sodomy or any unlawful sexual act, and the offender recklessly disregards the age of the child.

- (c) (1) Human trafficking is a severity level 2, person felony.
- (2) Aggravated human trafficking is a severity level 1, person felony, except as provided in subsection (c)(3).
- (3) Aggravated human trafficking or attempt, conspiracy or criminal solicitation to commit aggravated human trafficking is an off-grid person felony, when the offender is 18 years of age or older and the victim is less than 14 years of age.
- (4) In addition to any other sentence imposed, a person convicted under subsection (c)(1) shall be fined not less than \$2,500 nor more than \$5,000. In addition to any other sentence imposed, a person convicted under subsection (c)(2) or (c)(3) shall be fined not less than \$5,000. All fines collected pursuant to this section shall be remitted to the human trafficking victim assistance fund created by K.S.A. 75-758, and amendments thereto.
- (5) In addition to any other sentence imposed, for any conviction under this section, the court may order the person convicted to enter into and complete a suitable educational or treatment program regarding commercial sexual exploitation of a child.

(d) If the offender is 18 years of age or older and the victim is less than 14 years of age, the provisions of:

- (1) K.S.A. 2019 Supp. 21-5301(c), and amendments thereto, shall not apply to a violation of attempting to commit the crime of aggravated human trafficking pursuant to this section;
- (2) K.S.A. 2019 Supp. 21-5302(d), and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of aggravated human trafficking pursuant to this section; and
- (3) K.S.A. 2019 Supp. 21-5303(d), and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of aggravated human trafficking pursuant to this section.

(e) It shall be an affirmative defense to any prosecution under this section, except subsection (b)(3)-subsection (b)(4) or (5) that the defendant: ~~(1) Was under 18 years of age at the time of~~

~~the violation; and (2)~~ committed the violation because such defendant, at the time of the violation, was subjected to human trafficking, ~~or~~ aggravated human trafficking, or commercial sexual exploitation of a child, as defined by this section.

(f) It shall not be a defense to a charge of aggravated human trafficking, as defined in subsection (b)(4) or (5), that: (1) The victim consented or willingly participated in the forced labor, involuntary servitude or sexual gratification of the defendant or another; or (2) the offender had no knowledge of the age of the victim.

(g) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for commercial sexual exploitation of a child, as defined by K.S.A. 2019 Supp. 21-6422, and amendments thereto, or for any form of homicide.

(h) The provisions of this section shall not apply to the use of the labor of any person incarcerated in a state or county correctional facility or city jail.

(i) As used in this section:

- (1) "Child" means a person under 18 years of age; and
- (2) "peonage" means a condition of involuntary servitude in which the victim is forced to work for another person by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process.

**Examples of how the Committee’s recommendations could be incorporated into K.S.A. 2019 Supp. 21-6614.**

K.S.A. 21-6614

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

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

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

- (1) One or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; and
- (2) such person can prove they were acting under coercion caused by the act of another. For purposes of this subsection, “coercion” means: Threats of harm or physical restraint against any person; a scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in bodily harm or physical restraint against any person; or the abuse or threatened abuse of the legal process.
- (3) Nothing in this subsection precludes a person from petitioning for expungement under any other subsection.



(c) Any person with a conviction for any offense or an attempt, conspiracy, or criminal solicitation, except for those offenses enumerated in (f)(11)-(15), may petition the convicting court for the expungement of such conviction or related arrest records if the person alleges that the conviction concerned acts committed by the person as a result of being a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child at the time the crime was committed. This subsection also applies to any person who entered into a diversion agreement in lieu of further criminal proceedings for any offense.

- (1) The person may apply for expungement according to the limitations set forth in subsections (a), (b)(1), (d), and (e).
- (2) The court shall order expungement if the court finds the following by a preponderance of the evidence:
  - (A) the petitioner was a victim of human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child;
  - (B) the petitioner was coerced into committing the crime as a result of such victimization;
  - (C) the circumstances and the behavior of the petitioner warrant the expungement; and
  - (D) the expungement is consistent with the public welfare.
- (3) Outstanding costs, fees, fines, or restitution shall not be a reason to deny expungement under this section if the court otherwise finds the petitioner satisfies the elements set forth in subsection (c)(2). An unwillingness, rather than inability to pay such fees and costs can be a factor in denying expungement. Expungement shall not release the petitioner from the obligation to pay outstanding costs, fees, fines, or restitution.
- (4) A person petitioning for expungement under this subsection shall not be required to pay a docketing fee or the fee set forth in (h)(2).
- (5) Nothing in this subsection precludes a person from petitioning for expungement under any other subsection.

(d)(e) Except as provided in subsections (f) and (g) (e) and (f), no person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a

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

- (1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its repeal, or K.S.A. 21-5406, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;
- (2) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;
- (3) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto, or resulting from the violation of a law of another state which is in substantial conformity with that statute;
- (4) violating the provisions of K.S.A. 8-142 *Fifth*, and amendments thereto, relating to fraudulent applications or violating the provisions of a law of another state which is in substantial conformity with that statute;
- (5) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;
- (6) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1603, prior to its repeal, or K.S.A. 8-1602 or 8-1604, and amendments thereto, or required by a law of another state which is in substantial conformity with those statutes;
- (7) violating the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage; or
- (8) a violation of K.S.A. 21-3405b, prior to its repeal.

~~(e)(d)~~(1) No person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was

discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a first violation of K.S.A. 8-1567, and amendments thereto, including any diversion for such violation.

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

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

~~(f)~~(e) Except as provided in subsection (c), ~~¶~~ there shall be no expungement of convictions for the following offenses or of convictions for an attempt to commit any of the following offenses:

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

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

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

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

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

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

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

- (8) aggravated incest, as defined in K.S.A. 21-3603, prior to its repeal, or K.S.A. 21-5604, and amendments thereto;
- (9) endangering a child or aggravated endangering a child, as defined in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 21-5601, and amendments thereto;
- (10) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal, or K.S.A. 21-5602, and amendments thereto;
- (11) capital murder, as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 21-5401, and amendments thereto;
- (12) murder in the first degree, as defined in K.S.A. 21-3401, prior to its repeal, or K.S.A. 21-5402, and amendments thereto;
- (13) murder in the second degree, as defined in K.S.A. 21-3402, prior to its repeal, or K.S.A. 21-5403, and amendments thereto;
- (14) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to its repeal, or K.S.A. 21-5404, and amendments thereto;
- (15) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to its repeal, or K.S.A. 21-5405, and amendments thereto;
- (16) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal, or K.S.A. 21-5505, and amendments thereto, when the victim was less than 18 years of age at the time the crime was committed;
- (17) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to its repeal, or K.S.A. 21-5505, and amendments thereto;
- (18) a violation of K.S.A. 8-2,144, and amendments thereto, including any diversion for such violation; or
- (19) any conviction for any offense in effect at any time prior to July 1, 2011, that is comparable to any offense as provided in this subsection.

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

offender registration act. This subsection shall not apply to expungements sought under subsection (c).

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

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

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

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

~~(i)(h)~~ Except as provided in subsection (c), at the hearing on the petition, the court shall order the petitioner's arrest record, conviction or diversion expunged if the court finds that:

- (1) The petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;
- (2) the circumstances and behavior of the petitioner warrant the expungement; and
- (3) the expungement is consistent with the public welfare.

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

- (1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;
- (2) the petitioner shall disclose that the arrest, conviction or diversion occurred if asked about previous arrests, convictions or diversions:
  - (A) In any application for licensure as a private detective, private detective agency, certification as a firearms trainer pursuant to K.S.A. 75-7b21, and amendments thereto, or employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the Kansas department for aging and disability services;
  - (B) in any application for admission, or for an order of reinstatement, to the practice of law in this state;
  - (C) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

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

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

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

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

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

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

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

(K) to aid in determining the petitioner's qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act, K.S.A. 75-7c01 et seq., and amendments thereto; or

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

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

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

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

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

~~(l)(+)~~(1) Subject to the disclosures required pursuant to subsection ~~(j)(+)~~, in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records, conviction or diversion of a crime has been expunged under this statute may state that such person has never been arrested, convicted or diverted of such crime.

(2) Notwithstanding the provisions of subsection ~~(l)(+)~~(1), and except as provided in K.S.A. 21-6304(a)(3)(A), and amendments thereto, the expungement of a prior felony conviction does not relieve the individual of complying with any state or federal law relating to the use, shipment, transportation, receipt or possession of firearms by persons previously convicted of a felony.

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

(1) The person whose record was expunged;

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



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

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

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

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

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

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

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

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

- (11) the Kansas sentencing commission;
- (12) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications: (A) To be an employee of the state gaming agency; or (B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-gaming compact;
- (13) the Kansas securities commissioner or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged;
- (14) the Kansas commission on peace officers' standards and training and the request is accompanied by a statement that the request is being made to aid in determining certification eligibility as a law enforcement officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto;
- (15) a law enforcement agency and the request is accompanied by a statement that the request is being made to aid in determining eligibility for employment as a law enforcement officer as defined by K.S.A. 22-2202, and amendments thereto;
- (16) the attorney general and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to:
- (A) Carry a concealed weapon pursuant to the personal and family protection act; or
  - (B) act as a bail enforcement agent pursuant to K.S.A. 75-7e01 through 75-7e09 and K.S.A. 50-6,141, and amendments thereto; or
- (17) the Kansas bureau of investigation for the purposes of:
- (A) Completing a person's criminal history record information within the central repository, in accordance with K.S.A. 22-4701 et seq., and amendments thereto; or
  - (B) providing information or documentation to the federal bureau of investigation, in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm.

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



RICHARD E. WILBORN

SENATOR, 35TH DISTRICT  
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SENATE CHAMBER

COMMITTEE ASSIGNMENTS

CHAIR: JUDICIARY  
FINANCIAL INSTITUTIONS & INSURANCE  
UTILITIES  
JOINT COMMITTEE ON CORRECTIONS &  
JUVENILE OVERSIGHT

March 28, 2019

Nancy Strouse, Executive Director  
Kansas Judicial Council  
301 SW 10th Avenue  
Topeka, Kansas 66612

Dear Nancy:

I am writing to request Judicial Council study of a topic raised by two bills introduced during the 2019 Session and referred to the Senate Committee on Judiciary. After considering these bills and input from the Attorney General, who requested one of the bills, I believe that a more in-depth consideration of the issues raised by the legislation would be appropriate and desirable before the Legislature further considers the bills.

**SB 227 – Concerning human trafficking; relating to victims of human trafficking, aggravated human trafficking or commercial exploitation of a child; and**

**SB 154 – Concerning crimes, punishment and criminal procedure; relating to victims of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child**

SB 227 was introduced by the Senate Committee on Federal and State Affairs at the request of the Attorney General, and would address the availability of the compulsion defense and expungement to and offender registration requirements for victims of human trafficking who themselves engage in criminal conduct as a result of the offenses against them.

SB 154 was introduced by Senator Haley and would implement a separate procedure for a human trafficking victim to petition to set aside certain conviction or diversion agreements and related arrest records.

Neither bill had a hearing during the 2019 Session. Following introduction of the bills, the Attorney General contacted me. He noted the topic of how Kansas law should treat human trafficking victims who themselves engage in criminal conduct as a result of being victimized is a difficult subject matter and there is disagreement within the anti-human trafficking coalition regarding the right approach to this topic. The Attorney General suggested, and I agree, that

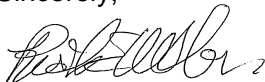
Judicial Council study of this topic and the approaches outlined by these two bills could help reach common ground, especially if the Judicial Council's review incorporates divergent points of view from prosecutors, law enforcement, victim advocates, and other interested parties.

Thus, I would appreciate the Judicial Council's consideration of this topic and the two bills described above and any recommendation regarding modifications to the legislation or introduction of alternative legislation. I am aware the Judicial Council is currently conducting at least one study that may have some connection to this topic. I leave it to the wisdom of the Judicial Council whether this topic, if accepted, would best be added to an existing study or pursued as a separate study.

Please let me know if I can provide any further information or answer any questions regarding this request.

Thank you.

Sincerely,



Senator Richard Wilborn

Chairman, Senate Committee on Judiciary

**SENATE BILL No. 227**

By Committee on Federal and State Affairs 3-14

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1 AN ACT concerning human trafficking; relating to victims of human  
2 trafficking, aggravated human trafficking or commercial sexual  
3 exploitation of a child; Kansas criminal code; compulsion defense;  
4 expungement; Kansas offender registration act; exemption from  
5 registration; termination of registration; revised Kansas juvenile justice  
6 code; expungement of records or files; amending K.S.A. 2018 Supp.  
7 21-5206, 21-6614, 22-4902, 22-4908 and 38-2312 and repealing the  
8 existing sections.

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

11 Section 1. K.S.A. 2018 Supp. 21-5206 is hereby amended to read as  
12 follows: 21-5206. (a) (1) A person is not guilty of a crime other than  
13 murder or voluntary manslaughter by reason of conduct *that* such  
14 person performs under the compulsion or threat of the imminent infliction  
15 of death or great bodily harm, if such person reasonably believes that death  
16 or great bodily harm will be inflicted upon such person or upon such  
17 person's spouse, parent, child, brother or sister if such person does not  
18 perform such conduct.

19 (2) *A person is not guilty of a crime other than murder or voluntary*  
20 *manslaughter by reason of conduct that such person is forced, coerced or*  
21 *deceived into performing as a direct result of such person's status as a*  
22 *victim of human trafficking, aggravated human trafficking or commercial*  
23 *sexual exploitation of a child.*

24 (A) *The person shall be required to prove such person's status as a*  
25 *victim at the time of such conduct by a preponderance of the evidence. An*  
26 *official determination or documentation shall not be required to assert the*  
27 *defense, but an official determination or documentation from a federal,*  
28 *state, local or tribal government agency that indicates the defendant was a*  
29 *victim at the time of such conduct shall create a rebuttable presumption*  
30 *that such conduct was a direct result of being a victim.*

31 (B) *As used in this subsection, "coerced" includes, but is not limited*  
32 *to, the following: Causing or threatening to cause injury to any person;*  
33 *physically restraining or threatening to physically restrain another*  
34 *person; abusing or threatening to abuse the law or legal process;*  
35 *threatening to withhold food, lodging or clothing; threatening to or*  
36 *destroying, concealing, removing, confiscating or possessing any actual or*

1 *purported government identification document of another person; or any*  
2 *other scheme, plan or pattern intended to cause a person to believe that*  
3 *failure to perform an act would result in bodily harm or physical restraint*  
4 *against any person.*

5 (C) *At the request of the person asserting the defense on the basis*  
6 *provided in this paragraph, the court may, at any time, issue a protective*  
7 *order concerning the protection of the confidentiality of such person.*

8 (b) The defense provided by this section is not available to a person  
9 who is 18 years of age or older and intentionally or recklessly places such  
10 person's self in a situation in which such person will be subjected to  
11 compulsion or threat.

12 Sec. 2. K.S.A. 2018 Supp. 21-6614 is hereby amended to read as  
13 follows: 21-6614. (a) (1) Except as provided in subsections (b), (c), (d),  
14 (e) and (f), any person convicted in this state of a traffic infraction,  
15 cigarette or tobacco infraction, misdemeanor or a class D or E felony, or  
16 for crimes committed on or after July 1, 1993, any nongrid felony or  
17 felony ranked in severity levels 6 through 10 of the nondrug grid, or for  
18 crimes committed on or after July 1, 1993, but prior to July 1, 2012, any  
19 felony ranked in severity level 4 of the drug grid, or for crimes committed  
20 on or after July 1, 2012, any felony ranked in severity level 5 of the drug  
21 grid may petition the convicting court for the expungement of such  
22 conviction or related arrest records if three or more years have elapsed  
23 since the person: (A) Satisfied the sentence imposed; or (B) was  
24 discharged from probation, a community correctional services program,  
25 parole, postrelease supervision, conditional release or a suspended  
26 sentence.

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

32 (b) (1) *This subsection shall apply to a person:*

33 (A) *Convicted of any offense if the person alleges that the conviction*  
34 *concerned acts committed by the person as a result of being a victim of*  
35 *human trafficking, aggravated human trafficking or commercial sexual*  
36 *exploitation of a child, including, but not limited to:*

37 (i) *Prostitution, as defined in K.S.A. 21-3512, prior to its repeal, or*  
38 *selling sexual relations, as defined in K.S.A. 2018 Supp. 21-6419, and*  
39 *amendments thereto;*

40 (ii) *promoting prostitution, as defined in K.S.A. 21-3513, prior to its*  
41 *repeal, or promoting the sale of sexual relations, as defined in K.S.A. 2018*  
42 *Supp. 21-6420, and amendments thereto;*

43 (iii) *patronizing a prostitute, as defined in K.S.A. 21-3515, prior to its*

1 *repeal, or buying sexual relations, as defined in K.S.A. 2018 Supp. 21-*  
2 *6421, and amendments thereto;*

3 *(iv) human trafficking or aggravated human trafficking, as defined in*  
4 *K.S.A. 21-3446 or 21-3447, prior to their repeal, or K.S.A. 2018 Supp. 21-*  
5 *5426, and amendments thereto; or*

6 *(v) commercial sexual exploitation of a child, as defined in K.S.A.*  
7 *2018 Supp. 21-6422, and amendments thereto;*

8 *(B) convicted of an attempt, conspiracy or criminal solicitation to*  
9 *commit any of the offenses described in this paragraph as the underlying*  
10 *offense; or*

11 *(C) who entered into a diversion agreement in lieu of further criminal*  
12 *proceedings for any offense described in this paragraph.*

13 *(2) Any person convicted of prostitution, as defined in K.S.A. 21*  
14 *3512, prior to its repeal, convicted of a violation of K.S.A. 2018 Supp. 21*  
15 *6419, and amendments thereto, or who entered into a diversion agreement*  
16 *in lieu of further criminal proceedings for such violation, A person*  
17 *described in subsection (b)(1) may petition the convicting court for the*  
18 *expungement of the conviction or diversion agreement described in*  
19 *subsection (b)(1) and related arrest records:-*

20 *(1) one or more years have elapsed since at any time after the person*  
21 *satisfied the sentence imposed or the terms of a diversion agreement or*  
22 *was discharged from probation, a community correctional services*  
23 *program, parole, postrelease supervision, conditional release or a*  
24 *suspended sentence*

25 *if such person can prove by a preponderance of the evidence that*  
26 *they were acting under coercion caused by the act of another at the time of*  
27 *the offense for which the person was convicted or diverted.*

28 For purposes of this subsection, "coercion" means: Threats of harm or  
29 physical restraint against any person; a scheme, plan or pattern intended to  
30 cause a person to believe that failure to perform an act would result in  
31 bodily harm or physical restraint against any person; or the abuse or  
32 threatened abuse of the legal process.

33 (c) Except as provided in subsections (b), (e) and (f), no person may  
34 petition for expungement until five or more years have elapsed since the  
35 person satisfied the sentence imposed or the terms of a diversion  
36 agreement or was discharged from probation, a community correctional  
37 services program, parole, postrelease supervision, conditional release or a  
38 suspended sentence, if such person was convicted of a class A, B or C  
39 felony, or for crimes committed on or after July 1, 1993, if convicted of an  
40 off-grid felony or any felony ranked in severity levels 1 through 5 of the  
41 nondrug grid, or for crimes committed on or after July 1, 1993, but prior to  
42 July 1, 2012, any felony ranked in severity levels 1 through 3 of the drug  
43 grid, or for crimes committed on or after July 1, 2012, any felony ranked



- 1 in severity levels 1 through 4 of the drug grid, or:
- 2 (1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its  
3 repeal, or K.S.A. 2018 Supp. 21-5406, and amendments thereto, or as  
4 prohibited by any law of another state which is in substantial conformity  
5 with that statute;
- 6 (2) driving while the privilege to operate a motor vehicle on the  
7 public highways of this state has been canceled, suspended or revoked, as  
8 prohibited by K.S.A. 8-262, and amendments thereto, or as prohibited by  
9 any law of another state which is in substantial conformity with that  
10 statute;
- 11 (3) perjury resulting from a violation of K.S.A. 8-261a, and  
12 amendments thereto, or resulting from the violation of a law of another  
13 state which is in substantial conformity with that statute;
- 14 (4) violating the provisions of K.S.A. 8-142 *Fifth*, and amendments  
15 thereto, relating to fraudulent applications or violating the provisions of a  
16 law of another state which is in substantial conformity with that statute;
- 17 (5) any crime punishable as a felony wherein a motor vehicle was  
18 used in the perpetration of such crime;
- 19 (6) failing to stop at the scene of an accident and perform the duties  
20 required by K.S.A. 8-1602, 8-1603, prior to its repeal, or 8-1604, and  
21 amendments thereto, or required by a law of another state which is in  
22 substantial conformity with those statutes;
- 23 (7) violating the provisions of K.S.A. 40-3104, and amendments  
24 thereto, relating to motor vehicle liability insurance coverage; or
- 25 (8) a violation of K.S.A. 21-3405b, prior to its repeal.
- 26 (d) (1) No person may petition for expungement until five or more  
27 years have elapsed since the person satisfied the sentence imposed or the  
28 terms of a diversion agreement or was discharged from probation, a  
29 community correctional services program, parole, postrelease supervision,  
30 conditional release or a suspended sentence, if such person was convicted  
31 of a first violation of K.S.A. 8-1567, and amendments thereto, including  
32 any diversion for such violation.
- 33 (2) No person may petition for expungement until 10 or more years  
34 have elapsed since the person satisfied the sentence imposed or was  
35 discharged from probation, a community correctional services program,  
36 parole, postrelease supervision, conditional release or a suspended  
37 sentence, if such person was convicted of a second or subsequent violation  
38 of K.S.A. 8-1567, and amendments thereto.
- 39 (3) Except as provided further, the provisions of this subsection shall  
40 apply to all violations committed on or after July 1, 2006. The provisions  
41 of subsection (d)(2) shall not apply to violations committed on or after  
42 July 1, 2014, but prior to July 1, 2015.
- 43 (e) *Except as provided in subsection (b)*, there shall be no

1 expungement of convictions for the following offenses or of convictions  
2 for an attempt to commit any of the following offenses:

3 (1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.  
4 2018 Supp. 21-5503, and amendments thereto;

5 (2) indecent liberties with a child or aggravated indecent liberties  
6 with a child, as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal,  
7 or K.S.A. 2018 Supp. 21-5506, and amendments thereto;

8 (3) criminal sodomy, as defined in K.S.A. 21-3505(a)(2) or (a)(3),  
9 prior to its repeal, or K.S.A. 2018 Supp. 21-5504(a)(3) or (a)(4), and  
10 amendments thereto;

11 (4) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior  
12 to its repeal, or K.S.A. 2018 Supp. 21-5504, and amendments thereto;

13 (5) indecent solicitation of a child or aggravated indecent solicitation  
14 of a child, as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal,  
15 or K.S.A. 2018 Supp. 21-5508, and amendments thereto;

16 (6) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior  
17 to its repeal, or K.S.A. 2018 Supp. 21-5510, and amendments thereto;

18 (7) internet trading in child pornography or aggravated internet  
19 trading in child pornography, as defined in K.S.A. 2018 Supp. 21-5514,  
20 and amendments thereto;

21 (8) aggravated incest, as defined in K.S.A. 21-3603, prior to its  
22 repeal, or K.S.A. 2018 Supp. 21-5604, and amendments thereto;

23 (9) endangering a child or aggravated endangering a child, as defined  
24 in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2018 Supp.  
25 21-5601, and amendments thereto;

26 (10) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal,  
27 or K.S.A. 2018 Supp. 21-5602, and amendments thereto;

28 (11) capital murder, as defined in K.S.A. 21-3439, prior to its repeal,  
29 or K.S.A. 2018 Supp. 21-5401, and amendments thereto;

30 (12) murder in the first degree, as defined in K.S.A. 21-3401, prior to  
31 its repeal, or K.S.A. 2018 Supp. 21-5402, and amendments thereto;

32 (13) murder in the second degree, as defined in K.S.A. 21-3402, prior  
33 to its repeal, or K.S.A. 2018 Supp. 21-5403, and amendments thereto;

34 (14) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to  
35 its repeal, or K.S.A. 2018 Supp. 21-5404, and amendments thereto;

36 (15) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to  
37 its repeal, or K.S.A. 2018 Supp. 21-5405, and amendments thereto;

38 (16) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal,  
39 or K.S.A. 2018 Supp. 21-5505, and amendments thereto, when the victim  
40 was less than 18 years of age at the time the crime was committed;

41 (17) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to  
42 its repeal, or K.S.A. 2018 Supp. 21-5505, and amendments thereto;

43 (18) a violation of K.S.A. 8-2,144, and amendments thereto,

1 including any diversion for such violation; or

2 (19) any conviction for any offense in effect at any time prior to July  
3 1, 2011, that is comparable to any offense as provided in this subsection.

4 (f) Notwithstanding any other law to the contrary, for any offender  
5 who is required to register as provided in the Kansas offender registration  
6 act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no  
7 expungement of any conviction or any part of the offender's criminal  
8 record while the *off*ender is required to register as provided in the Kansas  
9 offender registration act *except as s*provided in subsection (h)(2).

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

14 (A) Defendant's full name;

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

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

18 (D) crime for which the defendant was arrested, convicted or  
19 diverted;

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

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

23 (2) Except as otherwise provided by law, a petition for expungement  
24 shall be accompanied by a docket fee in the amount of \$176. On and after  
25 July 1, 2017, through June 30, 2019, the supreme court may impose a  
26 charge, not to exceed \$19 per case, to fund the costs of non-judicial  
27 personnel. The charge established in this section shall be the only fee  
28 collected or moneys in the nature of a fee collected for the case. Such  
29 charge shall only be established by an act of the legislature and no other  
30 authority is established by law or otherwise to collect a fee.

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

37 (h) (1) At the hearing on the petition *for expungement pursuant to*  
38 *subsection (a), (c) or (d)*, the court shall order the petitioner's arrest record,  
39 conviction or diversion expunged if the court finds that:

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

43 (B) the circumstances and behavior of the petitioner warrant the

1 expungement; and

2 *f31 (C) the expungement is consistent with the public welfare.*

3 *(2) (A) At the hearing on the petition for expungement pursuant to*  
4 *subsection (b), the court shall order the petitioner's arrest record,*  
5 *conviction or diversion expunged if:*

6 *(i) The court finds that the petitioner is a victim of human trafficking,*  
7 *aggravated human trafficking or commercial sexual exploitation of a*  
8 *child; and*

9 *(ii) the petitioner can prove by a preponderance of the evidence that*  
10 *they were acting under coercion caused by the act of another at the time of*  
11 *the offense.*

12 *(B) (i) A finding by the court that the petitioner was a victim of*  
13 *human trafficking, aggravated human trafficking or commercial sexual*  
14 *exploitation of a child at the time of the offense shall be prima facie*  
15 *evidence of coercion.*

16 *(ii) As used in this subsection, "coercion" means: Causing or*  
17 *threatening to cause injury to any person; physically restraining or*  
18 *threatening to physically restrain another person; abusing or threatening*  
19 *to abuse the law or legal process; threatening to withhold food, lodging or*  
20 *clothing; threatening to or destroying, concealing, removing, confiscating*  
21 *or possessing any actual or purported government identification document*  
22 *of another person; or any other scheme, plan or pattern intended to cause*  
23 *a person to believe that failure to perform an act would result in bodily*  
24 *harm or physical restraint against any person.*

25 *(C) Official documentation of a petitioner's status as a victim of*  
26 *human trafficking, aggravated human trafficking or commercial sexual*  
27 *exploitation of a child at the time of the offense shall create a rebuttable*  
28 *presumption that the petitioner was a victim of human trafficking,*  
29 *aggravated human trafficking or commercial sexual exploitation of a child*  
30 *at the time of the offense. Official documentation shall not be required to*  
31 *obtain relief under this subsection. As used in this subsection, "official*  
32 *documentation" means:*

33 *(i) A copy of an official record, certification or eligibility letter from a*  
34 *federal, state, tribal or local proceeding, including an approval notice or*  
35 *an enforcement certification generated from a federal immigration*  
36 *proceeding, that shows that the petitioner was a victim of human*  
37 *trafficking, aggravated human trafficking or commercial sexual*  
38 *exploitation of a child; or*

39 *(ii) an affidavit or sworn testimony from a member of the clergy, a*  
40 *medical professional, a trained professional staff member of a victim*  
41 *services organization, or other professional from whom the petitioner has*  
42 *sought legal counsel or other assistance in addressing the trauma and*  
43 *other challenges associated with being a victim of human trafficking,*

1 *aggravated human trafficking or commercial sexual exploitation of a*  
2 *child.*

3 *(D) In considering whether the petitioner is a victim of human*  
4 *trafficking, aggravated human trafficking or commercial sexual*  
5 *exploitation of a child, the court may consider any other evidence the*  
6 *court determines is of sufficient credibility and probative value, including*  
7 *an affidavit or sworn testimony. Such evidence may include, but is not*  
8 *limited to:*

9 *(i) Branding or other tattoos on the petitioner that identified the*  
10 *juvenile as having a trafficker;*

11 *(ii) testimony, police interview notes, police reports or affidavits from*  
12 *those with firsthand knowledge of the petitioner's involvement in the*  
13 *trafficking or exploitation, such as solicitors of commercial sex, family*  
14 *members, hotel workers and other individuals trafficked or exploited by*  
15 *the same individual or group of individuals who trafficked or exploited the*  
16 *petitioner;*

17 *(iii) financial records showing profits from the trafficking or*  
18 *exploitation, such as records of hotel stays, employment at indoor venues*  
19 *such as massage parlors, bottle clubs or strip clubs, or employment at an*  
20 *escort service;*

21 *(iv) internet listings, print advertisements or business cards used to*  
22 *promote the petitioner for trafficking or exploitation; or*

23 *(v) email, text or voicemail records between the petitioner, the*  
24 *trafficker or solicitors of sex that reveal aspects of the trafficking or*  
25 *exploitation, such as behavior patterns, meeting times, payments or*  
26 *examples of the trafficker exerting coercion over the petitioner.*

27 *(i) When the court has ordered an arrest record, conviction or*  
28 *diversion expunged, the order of expungement shall state the information*  
29 *required to be contained in the petition. The clerk of the court shall send a*  
30 *certified copy of the order of expungement 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 may*  
33 *have a record of the arrest, conviction or diversion. If the case was*  
34 *appealed from municipal court, the clerk of the district court shall send a*  
35 *certified copy of the order of expungement to the municipal court. The*  
36 *municipal court shall order the case expunged once the certified copy of*  
37 *the order of expungement is received. After the order of expungement is*  
38 *entered, the petitioner shall be treated as not having been arrested,*  
39 *convicted or diverted of the crime, except that:*

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

43 *(2) the petitioner shall disclose that the arrest, conviction or diversion*

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1 occurred if asked about previous arrests, convictions or diversions:

2 (A) In any application for licensure as a private detective, private  
3 detective agency, certification as a firearms trainer pursuant to K.S.A.  
4 2018 Supp. 75-7b21, and amendments thereto, or employment as a  
5 detective with a private detective agency, as defined by K.S.A. 75-7b01,  
6 and amendments thereto; as security personnel with a private patrol  
7 operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with  
8 an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of  
9 the Kansas department for aging and disability services;

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

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

16 (D) to aid in determining the petitioner's qualifications for executive  
17 director of the Kansas racing and gaming commission, for employment  
18 with the commission or for work in sensitive areas in parimutuel racing as  
19 deemed appropriate by the executive director of the commission, or to aid  
20 in determining qualifications for licensure or renewal of licensure by the  
21 comm lss10n;

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

27 (F) upon application for a commercial driver's license under K.S.A.  
28 8-2,125 through 8-2,142, and amendments thereto;

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

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

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

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

39 (K) for applications received on and after July 1, 2006, to aid in  
40 determining the petitioner's qualifications for a license to carry a concealed  
41 weapon pursuant to the personal and family protection act, K.S.A. 2018  
42 Supp. 75-7c01 et seq., and amendments thereto; or

43 (L) for applications received on and after July 1, 2017, to aid in

1 determining the petitioner's qualifications for a license to act as a bail  
2 enforcement agent pursuant to K.S.A. 2018 Supp. 75-7e01 through 75-  
3 7e09 and K.S.A. 2018 Supp. 50-6,141, and amendments thereto;

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

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

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

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

20 (k) (1) Subject to the disclosures required pursuant to subsection (i),  
21 in any application for employment, license or other civil right or privilege,  
22 or any appearance as a witness, a person whose arrest records, conviction  
23 or diversion of a crime has been expunged under this statute may state that  
24 such person has never been arrested, convicted or diverted of such crime.

25 (2) Notwithstanding the provisions of subsection (k)(1), and except as  
26 provided in K.S.A. 2018 Supp. 21-6304(a)(3)(A), and amendments  
27 thereto, the expungement of a prior felony conviction does not relieve the  
28 individual of complying with any state or federal law relating to the use,  
29 shipment, transportation, receipt or possession of firearms by persons  
30 previously convicted of a felony.

31 (l) Whenever the record of any arrest, conviction or diversion has  
32 been expunged under the provisions of this section or under the provisions  
33 of any other existing or former statute, the custodian of the records of  
34 arrest, conviction, diversion and incarceration relating to that crime shall  
35 not disclose the existence of such records, except when 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 person  
42 whose record has been expunged;

43 (4) the secretary for aging and disability services, or a designee of the

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

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

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

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

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

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

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

35 (11) the Kansas sentencing commission;

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

41 (13) the Kansas securities commissioner or a designee of the  
42 commissioner, and the request is accompanied by a statement that the  
43 request is being made in conjunction with an application for registration as



1 a broker-dealer, agent, investment adviser or investment adviser  
2 representative by such agency and the application was submitted by the  
3 person whose record has been expunged;

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

8 (15) a law enforcement agency and the request is accompanied by a  
9 statement that the request is being made to aid in determining eligibility  
10 for employment as a law enforcement officer as defined by K.S.A. 22-  
11 2202, and amendments thereto;

12 (16) the attorney general and the request is accompanied by a  
13 statement that the request is being made to aid in determining  
14 qualifications for a license to:

15 (A) Carry a concealed weapon pursuant to the personal and family  
16 protection act; or

17 (B) act as a bail enforcement agent pursuant to K.S.A. 2018 Supp. 18  
18 75-7e01 through 75-7e09 and K.S.A. 2018 Supp. 50-6,141, and  
19 amendments thereto; 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 (m) The provisions of subsection (1)(17) shall apply to records  
28 created prior to, on and after July 1, 2011.

29 Sec. 3. K.S.A. 2018 Supp. 22-4902 is hereby amended to read as  
30 follows: 22-4902. As used in the Kansas offender registration act, unless  
31 the context otherwise requires:

32 (a) "Offender" means:

33 (1) A sex offender;

34 (2) a violent offender;

35 (3) a drug offender;

36 (4) any person who has been required to register under out-of-state  
37 law or is otherwise required to be registered; and

38 (5) any person required by court order to register for an offense not  
39 otherwise required as provided in the Kansas offender registration act.

40 (b) "Sex offender" includes any person who:

41 (1) On or after April 14, 1994, is convicted of any sexually violent  
42 crime;

43 (2) on or after July 1, 2002, is adjudicated as a juvenile offender for

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1 an act which if committed by an adult would constitute the commission of  
2 a sexually violent crime, unless the court, on the record, finds that the act  
3 involved non-forcible sexual conduct, the victim was at least 14 years of  
4 age and the offender was not more than four years older than the victim;

5 (3) has been determined to be a sexually violent predator;

6 (4) on or after July 1, 1997, is convicted of any of the following  
7 crimes when one of the parties involved is less than 18 years of age:

8 (A) Adultery, as defined in K.S.A. 21-3507, prior to its repeal, or  
9 K.S.A. 2018 Supp. 21-5511, and amendments thereto;

10 (B) criminal sodomy, as defined in K.S.A. 21-3505(a)(1), prior to its  
11 repeal, or K.S.A. 2018 Supp. 21-5504(a)(1) or (a)(2), and amendments  
12 thereto;

13 (C) promoting prostitution, as defined in K.S.A. 21-3513, prior to its  
14 repeal, or K.S.A. 2018 Supp. 21-6420, prior to its amendment by section  
15 17 of chapter 120 of the 2013 Session Laws of Kansas on July 1, 2013;

16 (D) patronizing a prostitute, as defined in K.S.A. 21-3515, prior to its  
17 repeal, or K.S.A. 2018 Supp. 21-6421, prior to its amendment by section  
18 18 of chapter 120 of the 2013 Session Laws of Kansas on July 1, 2013; or

19 (E) lewd and lascivious behavior, as defined in K.S.A. 21-3508, prior  
20 to its repeal, or K.S.A. 2018 Supp. 21-5513, and amendments thereto;

21 (5) is convicted of sexual battery, as defined in K.S.A. 21-3517, prior  
22 to its repeal, or K.S.A. 2018 Supp. 21-5505(a), and amendments thereto;

23 (6) is convicted of an attempt, conspiracy or criminal solicitation, as  
24 defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or  
25 K.S.A. 2018 Supp. 21-5301, 21-5302, 21-5303, and amendments thereto,  
26 of an offense defined in this subsection; or

27 (7) has been convicted of an offense that is comparable to any crime  
28 defined in this subsection, or any out-of-state conviction for an offense that  
29 under the laws of this state would be an offense defined in this subsection.

30 (c) "Sexually violent crime" means:

31 (1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.  
32 2018 Supp. 21-5503, and amendments thereto;

33 (2) indecent liberties with a child, as defined in K.S.A. 21-3503, prior  
34 to its repeal, or K.S.A. 2018 Supp. 21-5506(a), and amendments thereto;

35 (3) aggravated indecent liberties with a child, as defined in K.S.A.  
36 21-3504, prior to its repeal, or K.S.A. 2018 Supp. 21-5506(b), and  
37 amendments thereto;

38 (4) criminal sodomy, as defined in K.S.A. 21-3505(a)(2) or (a)(3),  
39 prior to its repeal, or K.S.A. 2018 Supp. 21-5504(a)(3) or (a)(4), and  
40 amendments thereto;

41 (5) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior  
42 to its repeal, or K.S.A. 2018 Supp. 21-5504(b), and amendments thereto;

43 (6) indecent solicitation of a child, as defined in K.S.A. 21-3510,

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- 1 prior to its repeal, or K.S.A. 2018 Supp. 21-5508(a), and amendments  
2 thereto;
- 3 (7) aggravated indecent solicitation of a child, as defined in K.S.A.  
4 21-3511, prior to its repeal, or K.S.A. 2018 Supp. 21-5508(b), and  
5 amendments thereto;
- 6 (8) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior  
7 to its repeal, or K.S.A. 2018 Supp. 21-5510, and amendments thereto;
- 8 (9) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to  
9 its repeal, or K.S.A. 2018 Supp. 21-5505(b), and amendments thereto;
- 10 (10) aggravated incest, as defined in K.S.A. 21-3603, prior to its  
11 repeal, or K.S.A. 2018 Supp. 21-5604(b), and amendments thereto;
- 12 (11) electronic solicitation, as defined in K.S.A. 21-3523, prior to its  
13 repeal, and K.S.A. 2018 Supp. 21-5509, and amendments thereto;
- 14 (12) unlawful sexual relations, as defined in K.S.A. 21-3520, prior to  
15 its repeal, or K.S.A. 2018 Supp. 21-5512, and amendments thereto;
- 16 (13) aggravated human trafficking, as defined in K.S.A. 21-3447,  
17 prior to its repeal, or K.S.A. 2018 Supp. 21-5426(b), and amendments  
18 thereto, if committed in whole or in part for the purpose of the sexual  
19 gratification of the defendant or another;
- 20 (14) commercial sexual exploitation of a child, as defined in K.S.A.  
21 2018 Supp. 21-6422, and amendments thereto;
- 22 (15) promoting the sale of sexual relations, as defined in K.S.A. 2018  
23 Supp. 21-6420, and amendments thereto;
- 24 (16) any conviction or adjudication for an offense that is comparable  
25 to a sexually violent crime as defined in this subsection, or any out-of-state  
26 conviction or adjudication for an offense that under the laws of this state  
27 would be a sexually violent crime as defined in this subsection;
- 28 (17) an attempt, conspiracy or criminal solicitation, as defined in  
29 K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2018  
30 Supp. 21-5301, 21-5302, 21-5303, and amendments thereto, of a sexually  
31 violent crime, as defined in this subsection; or
- 32 (18) any act which has been determined beyond a reasonable doubt to  
33 have been sexually motivated, unless the court, on the record, finds that  
34 the act involved non-forcible sexual conduct, the victim was at least 14  
35 years of age and the offender was not more than four years older than the  
36 victim. As used in this paragraph, "sexually motivated" means that one of  
37 the purposes for which the defendant committed the crime was for the  
38 purpose of the defendant's sexual gratification.
- 39 (d) "Sexually violent predator" means any person who, on or after  
40 July 1, 2001, is found to be a sexually violent predator pursuant to K.S.A.  
41 59-29a01 et seq., and amendments thereto.
- 42 (e) "Violent offender" includes any person who:  
43 (1) On or after July 1, 1997, is convicted of any of the following

- 1 crimes:
- 2 (A) Capital murder, as defined in K.S.A. 21-3439, prior to its repeal,  
3 or K.S.A. 2018 Supp. 21-5401, and amendments thereto;
- 4 (B) murder in the first degree, as defined in K.S.A. 21-3401, prior to  
5 its repeal, or K.S.A. 2018 Supp. 21-5402, and amendments thereto;
- 6 (C) murder in the second degree, as defined in K.S.A. 21-3402, prior  
7 to its repeal, or K.S.A. 2018 Supp. 21-5403, and amendments thereto;
- 8 (D) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to its  
9 repeal, or K.S.A. 2018 Supp. 21-5404, and amendments thereto;
- 10 (E) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to  
11 its repeal, or K.S.A. 2018 Supp. 21-5405(a)(1), (a)(2) or (a)(4), and  
12 amendments thereto. The provisions of this paragraph shall not apply to  
13 violations of K.S.A. 2018 Supp. 21-5405(a)(3), and amendments thereto,  
14 which occurred on or after July 1, 2011, through July 1, 2013;
- 15 (F) kidnapping, as defined in K.S.A. 21-3420, prior to its repeal, or  
16 K.S.A. 2018 Supp. 21-5408(a), and amendments thereto;
- 17 (G) aggravated kidnapping, as defined in K.S.A. 21-3421, prior to its  
18 repeal, or K.S.A. 2018 Supp. 21-5408(b), and amendments thereto;
- 19 (H) criminal restraint, as defined in K.S.A. 21-3424, prior to its  
20 repeal, or K.S.A. 2018 Supp. 21-5411, and amendments thereto, except by  
21 a parent, and only when the victim is less than 18 years of age; or
- 22 (I) aggravated human trafficking, as defined in K.S.A. 21-3447, prior  
23 to its repeal, or K.S.A. 2018 Supp. 21-5426(b), and amendments thereto, if  
24 not committed in whole or in part for the purpose of the sexual  
25 gratification of the defendant or another;
- 26 (2) on or after July 1, 2006, is convicted of any person felony and the  
27 court makes a finding on the record that a deadly weapon was used in the  
28 commission of such person felony;
- 29 (3) has been convicted of an offense that is comparable to any crime  
30 defined in this subsection, any out-of-state conviction for an offense that  
31 under the laws of this state would be an offense defined in this subsection;  
32 or
- 33 (4) is convicted of an attempt, conspiracy or criminal solicitation, as  
34 defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or  
35 K.S.A. 2018 Supp. 21-5301, 21-5302 and 21-5303, and amendments  
36 thereto, of an offense defined in this subsection.
- 37 (f) "Drug offender" includes any person who, on or after July 1, 2007:
- 38 (1) Is convicted of any of the following crimes:
- 39 (A) Unlawful manufacture or attempting such of any controlled  
40 substance or controlled substance analog, as defined in K.S.A. 65-4159,  
41 prior to its repeal, K.S.A. 2010 Supp. 21-36a03, prior to its transfer, or  
42 K.S.A. 2018 Supp. 21-5703, and amendments thereto;
- 43 (B) possession of ephedrine, pseudoephedrine, red phosphorus,

1 lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized  
2 ammonia or phenylpropanolamine, or their salts, isomers or salts of  
3 isomers with intent to use the product to manufacture a controlled  
4 substance, as defined in K.S.A. 65-7006(a), prior to its repeal, K.S.A. 2010  
5 Supp. 21-36a09(a), prior to its transfer, or K.S.A. 2018 Supp. 21-5709(a),  
6 and amendments thereto;

7 (C) K.S.A. 65-4161, prior to its repeal, K.S.A. 2010 Supp. 21-  
8 36a05(a)(1), prior to its transfer, or K.S.A. 2018 Supp. 21-5705(a)(1), and  
9 amendments thereto. The provisions of this paragraph shall not apply to  
10 violations of K.S.A. 2010 Supp. 21-36a05(a)(2) through (a)(6) or (b)  
11 which occurred on or after July 1, 2009, through April 15, 2010;

12 (2) has been convicted of an offense that is comparable to any crime  
13 defined in this subsection, any out-of-state conviction for an offense that  
14 under the laws of this state would be an offense defined in this subsection;  
15 or

16 (3) is or has been convicted of an attempt, conspiracy or criminal  
17 solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to  
18 their repeal, or K.S.A. 2018 Supp. 21-5301, 21-5302 and 21-5303, and  
19 amendments thereto, of an offense defined in this subsection.

20 (g) Convictions or adjudications which result from or are connected  
21 with the same act, or result from crimes committed at the same time, shall  
22 be counted for the purpose of this section as one conviction or  
23 adjudication. Any conviction or adjudication set aside pursuant to law is  
24 not a conviction or adjudication for purposes of this section. A conviction  
25 or adjudication from any out-of-state court shall constitute a conviction or  
26 adjudication for purposes of this section.

27 (h) "School" means any public or private educational institution,  
28 including, but not limited to, postsecondary school, college, university,  
29 community college, secondary school, high school, junior high school,  
30 middle school, elementary school, trade school, vocational school or  
31 professional school providing training or education to an offender for three  
32 or more consecutive days or parts of days, or for 10 or more  
33 nonconsecutive days in a period of 30 consecutive days.

34 (i) "Employment" means any full-time, part-time, transient, day-labor  
35 employment or volunteer work, with or without compensation, for three or  
36 more consecutive days or parts of days, or for 10 or more nonconsecutive  
37 days in a period of 30 consecutive days.

38 (G) "Reside" means to stay, sleep or maintain with regularity or  
39 temporarily one's person and property in a particular place other than a  
40 location where the offender is incarcerated. It shall be presumed that an  
41 offender resides at any and all locations where the offender stays, sleeps or  
42 maintains the offender's person for three or more consecutive days or parts  
43 of days, or for ten or more nonconsecutive days in a period of 30

1 consecutive days.

2 (k) "Residence" means a particular and definable place where an  
3 individual resides. Nothing in the Kansas offender registration act shall be  
4 construed to state that an offender may only have one residence for the  
5 purpose of such act.

6 (l) "Transient" means having no fixed or identifiable residence.

7 (m) "Law enforcement agency having initial jurisdiction" means the  
8 registering law enforcement agency of the county or location of  
9 jurisdiction where the offender expects to most often reside upon the  
10 offender's discharge, parole or release.

11 (n) "Registering law enforcement agency" means the sheriff's office  
12 or tribal police department responsible for registering an offender.

13 (o) "Registering entity" means any person, agency or other  
14 governmental unit, correctional facility or registering law enforcement  
15 agency responsible for obtaining the required information from, and  
16 explaining the required registration procedures to, any person required to  
17 register pursuant to the Kansas offender registration act. "Registering  
18 entity" shall include, but not be limited to, sheriff's offices, tribal police  
19 departments and correctional facilities.

20 (p) "Treatment facility" means any public or private facility or  
21 institution providing inpatient mental health, drug or alcohol treatment or  
22 counseling, but does not include a hospital, as defined in K.S.A. 65-425,  
23 and amendments thereto.

24 (q) "Correctional facility" means any public or private correctional  
25 facility, juvenile detention facility, prison or jail.

26 (r) "Out-of-state" means: the District of Columbia; any federal,  
27 military or tribal jurisdiction, including those within this state; any foreign  
28 jurisdiction; or any state or territory within the United States, other than  
29 this state.

30 (s) "Duration of registration" means the length of time during which  
31 an offender is required to register for a specified offense or violation.

32 (t) (1) Notwithstanding any other provision of this section, "offender"  
33 shall not include any person who is:

34 (A) Convicted of unlawful transmission of a visual depiction of a  
35 child, as defined in K.S.A. 2018 Supp. 21-5611(a), and amendments  
36 thereto, aggravated unlawful transmission of a visual depiction of a child,  
37 as defined in K.S.A. 2018 Supp. 21-5611(b), and amendments thereto, or  
38 unlawful possession of a visual depiction of a child, as defined in K.S.A.  
39 2018 Supp. 21-5610, and amendments thereto; or

40 (B) adjudicated as a juvenile offender for an act which if committed  
41 by an adult would constitute the commission of a crime defined in  
42 subsection (t)(1)(A).

43 (2) Notwithstanding any other provision of law, a court shall not

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1 order any person to register under the Kansas offender registration act for  
2 the offenses described in subsection (t)(1).

3 *(u) Notwithstanding any other provision of this section, a court shall*  
4 *not order any person to register under the Kansas offender registration act*  
5 *if such person is convicted of any crime or adjudicated as a juvenile*  
6 *offender for any offense and the court, on the record, finds that:*

7 *(1) The person was less than 18 years of age at the time of the act;*

8 *(2) the person was a victim of human trafficking, as defined in K.S.A.*  
9 *21-3446, prior to its repeal, or K.S.A. 2018 Supp. 21-5426(a), and*  
10 *amendments thereto, aggravated human trafficking, as defined in K.S.A.*  
11 *21-3447, prior to its repeal, or K.S.A. 2018 Supp. 21-5426(b), and*  
12 *amendments thereto, or commercial sexual exploitation of a child, as*  
13 *defined in K.S.A. 2018 Supp. 21-6422, and amendments thereto, at the*  
14 *time of the act; and*

15 *(3) the trafficker or trafficking ring used force, fraud or coercion, as*  
16 *defined in K.S.A. 2018 Supp. 21-6614 or 38-2312, and amendments*  
17 *thereto, to influence the person to commit the act.*

18 Sec. 4. K.S.A. 2018 Supp. 22-4908 is hereby amended to read as  
19 follows: 22-4908. *(a) Except as provided in subsection (b), no person*  
20 *required to register as an offender pursuant to the Kansas offender*  
21 *registration act shall be granted an order relieving the offender of further*  
22 *registration under this act. This section shall include any person with any*  
23 *out-of-state conviction or adjudication for an offense that would require*  
24 *registration under the laws of this state.*

25 *(b) A person required to register as an offender pursuant to the*  
26 *Kansas offender registration act shall be granted an order relieving the*  
27 *offender of further registration under this act if a court orders the offense*  
28 *requiring registration expunged based on a finding pursuant to K.S.A.*  
29 *2018 Supp. 21-6614(h)(2) or 38-2312(e)(2), and amendments thereto, that*  
30 *the person committed the offense as a result of being a victim of human*  
31 *trafficking, aggravated human trafficking or commercial sexual*  
32 *exploitation of a child*

33 Sec. 5. K.S.A. 2018 Supp. 38-2312 is hereby amended to read as  
34 follows: 38-2312. *(a) (1) Except as provided in subsections (b) and (c),*  
35 *any records or files specified in this code concerning a juvenile may be*  
36 *expunged upon application to a judge of the court of the county in which*  
37 *the records or files are maintained.*

38 *(2) Any records or files specified in this code concerning a juvenile*  
39 *may be expunged upon application to a judge of the court of the county in*  
40 *which the records or files are maintained if such application alleges that*  
41 *the juvenile: (A) Is a victim of human trafficking, aggravated human*  
42 *trafficking or commercial sexual exploitation of a child; and (B) was*  
43 *acting under coercion caused by the act of another at the time of the*

1 *offense for which the juvenile was adjudicated*

2 (3) The application for expungement may be made by the juvenile, if  
3 18 years of age or older or, if the juvenile is less than 18 years of age, by  
4 the juvenile's parent or next friend.

5 (b) *Except as provided in subsection (e)(2)*, there shall be no  
6 expungement of records or files concerning acts committed by a juvenile  
7 which, if committed by an adult, would constitute a violation of K.S.A. 21-  
8 3401, prior to its repeal, or K.S.A. 2018 Supp. 21-5402, and amendments  
9 thereto, murder in the first degree; K.S.A. 21-3402, prior to its repeal, or  
10 K.S.A. 2018 Supp. 21-5403, and amendments thereto, murder in the  
11 second degree; K.S.A. 21-3403, prior to its repeal, or K.S.A. 2018 Supp.  
12 21-5404, and amendments thereto, voluntary manslaughter; K.S.A. 21-  
13 3404, prior to its repeal, or K.S.A. 2018 Supp. 21-5405, and amendments  
14 thereto, involuntary manslaughter; K.S.A. 21-3439, prior to its repeal, or  
15 K.S.A. 2018 Supp. 21-5401, and amendments thereto, capital murder;  
16 K.S.A. 21-3442, prior to its repeal, or K.S.A. 2018 Supp. 21-5405(a)(3) or  
17 (a)(5), and amendments thereto, involuntary manslaughter while driving  
18 under the influence of alcohol or drugs; K.S.A. 21-3502, prior to its repeal,  
19 or K.S.A. 2018 Supp. 21-5503, and amendments thereto, rape; K.S.A. 21-  
20 3503, prior to its repeal, or K.S.A. 2018 Supp. 21-5506(a), and  
21 amendments thereto, indecent liberties with a child; K.S.A. 21-3504, prior  
22 to its repeal, or K.S.A. 2018 Supp. 21-5506(b), and amendments thereto,  
23 aggravated indecent liberties with a child; K.S.A. 21-3506, prior to its  
24 repeal, or K.S.A. 2018 Supp. 21-5504(b), and amendments thereto,  
25 aggravated criminal sodomy; K.S.A. 21-3510, prior to its repeal, or K.S.A.  
26 2018 Supp. 21-5508(a), and amendments thereto, indecent solicitation of a  
27 child; K.S.A. 21-3511, prior to its repeal, or K.S.A. 2018 Supp. 21-  
28 5508(b), and amendments thereto, aggravated indecent solicitation of a  
29 child; K.S.A. 21-3516, prior to its repeal, or K.S.A. 2018 Supp. 21-5510,  
30 and amendments thereto, sexual exploitation of a child; K.S.A. 2018 Supp.  
31 21-5514(a), and amendments thereto, internet trading in child  
32 pornography; K.S.A. 2018 Supp. 21-5514(b), and amendments thereto,  
33 aggravated internet trading in child pornography; K.S.A. 21-3603, prior to  
34 its repeal, or K.S.A. 2018 Supp. 21-5604(b), and amendments thereto,  
35 aggravated incest; K.S.A. 21-3608, prior to its repeal, or K.S.A. 2018  
36 Supp. 21-5601(a), and amendments thereto, endangering a child; K.S.A.  
37 21-3609, prior to its repeal, or K.S.A. 2018 Supp. 21-5602, and  
38 amendments thereto, abuse of a child; or which would constitute an  
39 attempt to commit a violation of any of the offenses specified in this  
40 subsection.

41 (c) Notwithstanding any other law to the contrary, for any offender  
42 who is required to register as provided in the Kansas offender registration  
43 act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no



1 expungement of any conviction or any part of the offender's criminal  
2 record while the offender is required to register as provided in the Kansas  
3 offender registration act *except as provided in subsection (e)(2)*.

4 (d) When a petition for expungement is filed, the court shall set a date  
5 for a hearing on the petition and shall give notice thereof to the county or  
6 district attorney. The petition shall state: (1) The juvenile's full name; (2)  
7 the full name of the juvenile as reflected in the court record, if different  
8 than (1); (3) the juvenile's sex and date of birth; (4) the offense for which  
9 the juvenile was adjudicated; (5) the date of the trial; and (6) the identity  
10 of the trial court. Except as otherwise provided by law, a petition for  
11 expungement shall be accompanied by a docket fee in the amount of \$176.  
12 On and after July 1, 2017, through June 30, 2019, the supreme court may  
13 impose a charge, not to exceed \$19 per case, to fund the costs of non-  
14 judicial personnel. All petitions for expungement shall be docketed in the  
15 original action. Any person who may have relevant information about the  
16 petitioner may testify at the hearing. The court may inquire into the  
17 background of the petitioner.

18 (e) (1) After a hearing *on a petition for expungement pursuant to*  
19 *subsection (a)(1)*, the court shall order the expungement of the records and  
20 files if the court finds that:

21 (A) (i) The juvenile as reached 23 years of age or that two years  
22 have elapsed since the final discharge; *or*

23 (ii) one year has elapsed since the final discharge for an adjudication  
24 concerning acts committed by a juvenile which, if committed by an adult,  
25 would constitute a violation of K.S.A. 2018 Supp. 21-6419, and  
26 amendments thereto

27 (iii) the juvenile is a victim of human trafficking, aggravated human  
28 trafficking or commercial sexual exploitation of a child, the adjudication-  
29 concerned acts committed by the juvenile as a result of such victimization,  
30 including, but not limited to, acts which, if committed by an adult, would  
31 constitute a violation of K.S.A. 2018 Supp. 21 6203 or 21 6419, and  
32 amendments thereto, and the hearing on expungement occurred on or after  
33 the date of final discharge. The provisions of this clause shall not allow an  
34 expungement of records or files concerning acts described in subsection-  
35 (:b);

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

41 (C) the circumstances and behavior of the petitioner warrant  
42 expungement.

43 (2) (A) *After a hearing on a petition for expungement pursuant to*

1 subsection (a)(2), the court shall order the expungement of the records and  
2 files **if** the court finds that:

3 (i) The juvenile is a victim of human trafficking, aggravated human  
4 trafficking or commercial sexual exploitation of a child;

5 (ii) the juvenile was acting under coercion caused by the act of  
6 another at the time of the offense for which the juvenile was adjudicated,  
7 including, but not limited to, acts which, **if** committed by an adult, would  
8 constitute a violation of K.S.A. 2018 Supp. 21-6203 or 21-6419, and  
9 amendments thereto; and

10 (iii) the hearing on expungement occurred at any time on or after the  
11 date of adjudication.

12 (B) (i) A finding by the court that the juvenile was a victim of human  
13 trafficking, aggravated human trafficking or commercial sexual  
14 exploitation of a child at the time of the offense shall be prima facie  
15 evidence of coercion.

16 (ii) As used in this subsection, "coercion" means: Causing or  
17 threatening to cause injury to any person; physically restraining or  
18 threatening to physically restrain another person; abusing or threatening  
19 to abuse the law or legal process; threatening to withhold food, lodging or  
20 clothing; threatening to or destroying, concealing, removing, confiscating  
21 or possessing any actual or purported government identification document  
22 of another person; or any other scheme, plan or pattern intended to cause  
23 a person to believe that failure to perform an act would result in bodily  
24 harm or physical restraint against any person.

25 (C) Official documentation of a juvenile's status as a victim of human  
26 trafficking, aggravated human trafficking or commercial sexual  
27 exploitation of a child at the time of the offense shall create a rebuttable  
28 presumption that the juvenile was a victim of human trafficking,  
29 aggravated human trafficking or commercial sexual exploitation of a child  
30 at the time of the offense. Official documentation shall not be required to  
31 obtain relief under this subsection. As used in this subsection, "official  
32 documentation" means:

33 (i) A copy of an official record, certification or eligibility letter from a  
34 federal, state, tribal or local proceeding, including an approval notice or  
35 an enforcement certification generated from a federal immigration  
36 proceeding, that shows that the juvenile was a victim of human trafficking,  
37 aggravated human trafficking or commercial sexual exploitation of a  
38 child; or

39 (ii) an affidavit or sworn testimony from a member of the clergy, a  
40 medical professional, a trained professional staff member of a victim  
41 services organization, or other professional from whom the juvenile has  
42 sought legal counsel or other assistance in addressing the trauma and  
43 other challenges associated with being a victim of human trafficking,

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1 aggravated human trafficking or commercial sexual exploitation of a  
2 child

3 (D) In considering whether the juvenile is a victim of human  
4 trafficking, aggravated human trafficking or commercial sexual  
5 exploitation of a child, the court may consider any other evidence the  
6 court determines is of sufficient credibility and probative value, including  
7 an affidavit or sworn testimony. Such evidence may include, but is not  
8 limited to:

9 (i) Branding or other tattoos on the juvenile that identified the  
10 juvenile as having a trafficker;

11 (ii) testimony, police interview notes, police reports or affidavits from  
12 those with firsthand knowledge of the juvenile's involvement in the  
13 trafficking or exploitation, such as solicitors of commercial sex, family  
14 members, hotel workers and other individuals trafficked or exploited by  
15 the same individual or group of individuals who trafficked or exploited the  
16 juvenile;

17 (iii) financial records showing profits from the trafficking or  
18 exploitation, such as records of hotel stays, employment at indoor venues  
19 such as massage parlors, bottle clubs or strip clubs, or employment at an  
20 escort service;

21 (iv) internet listings, print advertisements or business cards used to  
22 promote the juvenile for trafficking or exploitation; or

23 (v) email, text or voicemail records between the juvenile, the  
24 trafficker or solicitors of sex that reveal aspects of the trafficking or  
25 exploitation, such as behavior patterns, meeting times, payments or  
26 examples of the trafficker exerting coercion over the juvenile.

27 (3) The court may require that all court costs, fees and restitution  
28 shall be paid.

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

40 (g) A certified copy of any order made pursuant to subsection (a) or  
41 (d) shall be sent to the Kansas bureau of investigation, which shall notify  
42 every juvenile or criminal justice agency which may possess records or  
43 files ordered to be expunged. **If** the agency fails to comply with the order

1 within a reasonable time after its receipt, such agency may be adjudged in  
2 contempt of court and punished accordingly.

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

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

9 G) Nothing in this section shall be construed to permit or require  
10 expungement of files or records related to a child support order registered  
11 pursuant to the revised Kansas juvenile justice code.

12 (k) Whenever the records or files of any adjudication have been  
13 expunged under the provisions of this section, the custodian of the records  
14 or files of adjudication relating to that offense shall not disclose the  
15 existence of such records or files, except when requested by:

16 (1) The person whose record was expunged;

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

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

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

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

30 (6) the Kansas lottery, and the request is accompanied by a statement  
31 that the request is being made to aid in determining 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 (7) the governor or the Kansas racing commission, or a designee of  
36 the commission, and the request is accompanied by a statement that the  
37 request is being made to aid in determining qualifications for executive  
38 director of the commission, for employment with the commission, for  
39 work in sensitive areas in parimutuel racing as deemed appropriate by the  
40 executive director of the commission or for licensure, renewal of licensure  
41 or continued licensure by the commission;

42 (8) the Kansas sentencing commission; or

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

- 1 (A) Completing a person's criminal history record information within
- 2 the central repository in accordance with K.S.A. 22-4701 et seq., and
- 3 amendments thereto; or
- 4 (B) providing information or documentation to the federal bureau of
- 5 investigation, in connection with the national instant criminal background
- 6 check system, to determine a person's qualification to possess a firearm.
- 7 (1) The provisions of subsection (k)(9) shall apply to all records
- 8 created prior to, on and after July 1, 2011.
- 9 Sec. 6. K.S.A. 2018 Supp. 21-5206, 21-6614, 22-4902, 22-4908 and
- 10 38-2312 are hereby repealed.
- 11 Sec. 7. This act shall take effect and be in force from and after its
- 12 publication in the statute book.

**SENATE BILL No. 154**

By Senator Haley

2-12

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1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to victims of human trafficking, aggravated human trafficking or  
3 commercial sexual exploitation of a child; petition to set aside certain  
4 conviction or diversion agreements and related arrest records.  
5

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

7 Section 1. (a) This section shall apply to a person:

8 (1) Convicted of any offense if the person alleges that the conviction  
9 concerned acts committed by the person as a result of being a victim of  
10 human trafficking, aggravated human trafficking or commercial sexual  
11 exploitation of a child, including, but not limited to:

12 (A) Prostitution, as defined in K.S.A. 21-3512, prior to its repeal, or  
13 selling sexual relations, as defined in K.S.A. 2018 Supp. 21-6419, and  
14 amendments thereto;

15 (B) promoting prostitution, as defined in K.S.A. 21-3513, prior to its  
16 repeal, or promoting the sale of sexual relations, as defined in K.S.A. 2018  
17 Supp. 21-6420, and amendments thereto;

18 (C) patronizing a prostitute, as defined in K.S.A. 21-3515, prior to its  
19 repeal, or buying sexual relations, as defined in K.S.A. 2018 Supp. 21-  
20 6421, and amendments thereto;

21 (D) human trafficking or aggravated human trafficking, as defined in  
22 K.S.A. 21-3446 or 21-3447, prior to their repeal, or K.S.A. 2018 Supp. 21-  
23 5426, and amendments thereto; or

24 (E) commercial sexual exploitation of a child, as defined in K.S.A.  
25 2018 Supp. 21-6422, and amendments thereto;

26 (2) convicted of attempt, conspiracy, criminal solicitation, being an  
27 accessory to, aiding and abetting, aiding the consummation of or  
28 compounding a felony with any of the offenses described in this  
29 subsection as the underlying offense; or

30 (3) who entered into a diversion agreement in lieu of further criminal  
31 proceedings for any violation described in this subsection.

32 (b) A person described in subsection (a) may petition the convicting  
33 court to set aside the conviction or diversion agreement described in  
34 subsection (a) and related arrest records at any time.

35 (c) (1) When a petition is filed pursuant to this section, the court shall  
36 set a date for a hearing on the petition and shall give notice of such hearing

1 to the prosecutor and the arresting law enforcement agency. The petition  
2 shall state the:

3 (A) Defendant's full name;

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

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

7 (D) crime for which the defendant was arrested, convicted or  
8 diverted;

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

10 (F) identity of the convicting court, arresting law enforcement  
11 authority or diverting authority; and

12 (G) the specific facts the defendant will rely on to support the claim  
13 that the defendant was a victim of human trafficking, aggravated human  
14 trafficking or commercial sexual exploitation of a child and was acting  
15 under coercion caused by the act of another.

16 (2) No surcharge or fee shall be imposed to any person filing a  
17 petition pursuant to this section.

18 (3) All petitions under this section shall be docketed as a new case in  
19 the same court as the original criminal action. Any person who may have  
20 relevant information about the petitioner may testify at the hearing. The  
21 court may inquire into the background of the petitioner and shall have  
22 access to any reports or records relating to the petitioner that are on file  
23 with the secretary of corrections or the prisoner review board.

24 (d) (1) At the hearing on the petition, the court shall grant such  
25 petition to set aside the petitioner's arrest record, conviction or diversion if:

26 (A) The court finds that the petitioner is a victim of human  
27 trafficking, aggravated human trafficking or commercial sexual  
28 exploitation of a child; and

29 (B) the petitioner can prove by a preponderance of the evidence that  
30 they were acting under coercion caused by the act of another at the time of  
31 the offense.

32 (2) (A) A finding by the court that the petitioner was a victim of  
33 human trafficking, aggravated human trafficking or commercial sexual  
34 exploitation of a child at the time of the offense shall be prima facie  
35 evidence of coercion.

36 (B) For purposes of this subsection, "coercion" means: Causing or  
37 threatening to cause injury to any person; physically restraining or  
38 threatening to physically restrain another person; abusing or threatening to  
39 abuse the law or legal process; threatening to withhold food, lodging or  
40 clothing; threatening to or destroying, concealing, removing, confiscating  
41 or possessing any actual or purported government identification document  
42 of another person; or any other scheme, plan or pattern intended to cause a  
43 person to believe that failure to perform an act would result in bodily harm

1 or physical restraint against any person.

2 (3) Official documentation of a petitioner's status as a victim of  
3 human trafficking, aggravated human trafficking or commercial sexual  
4 exploitation of a child at the time of the offense shall create a rebuttable  
5 presumption that the petitioner was a victim of human trafficking,  
6 aggravated human trafficking or commercial sexual exploitation of a child  
7 at the time of the offense. Official documentation shall not be required to  
8 obtain relief under this section. As used in this subsection, "official  
9 documentation" means:

10 (A) A copy of an official record, certification or eligibility letter from  
11 a federal, state, tribal or local proceeding, including an approval notice or  
12 an enforcement certification generated from a federal immigration  
13 proceeding, that shows that the petitioner was a victim of human  
14 trafficking, aggravated human trafficking or commercial sexual  
15 exploitation of a child; or

16 (B) an affidavit or sworn testimony from a member of the clergy, a  
17 medical professional, a trained professional staff member of a victim  
18 services organization, or other professional from whom the petitioner has  
19 sought legal counsel or other assistance in addressing the trauma and other  
20 challenges associated with being a victim of human trafficking, aggravated  
21 human trafficking or commercial sexual exploitation of a child.

22 (4) In considering whether the petitioner is a victim of human  
23 trafficking, aggravated human trafficking or commercial sexual  
24 exploitation of a child, the court may consider any other evidence the court  
25 determines is of sufficient credibility and probative value, including an  
26 affidavit or sworn testimony. Such evidence may include, but is not limited  
27 to:

28 (A) Branding or other tattoos on the petitioner that identified the  
29 petitioner as having a trafficker;

30 (B) testimony, police interview notes, police reports or affidavits from  
31 those with firsthand knowledge of the petitioner's involvement in the  
32 trafficking or exploitation, such as solicitors of commercial sex, family  
33 members, hotel workers and other individuals trafficked or exploited by  
34 the same individual or group of individuals who trafficked or exploited the  
35 petitioner;

36 (C) financial records showing profits from the trafficking or  
37 exploitation, such as records of hotel stays, employment at indoor venues  
38 such as massage parlors, bottle clubs or strip clubs, or employment at an  
39 escort service;

40 (D) internet listings, print advertisements or business cards used to  
41 promote the petitioner for trafficking or exploitation; or

42 (E) email, text or voicemail records between the petitioner, the  
43 trafficker or solicitors of sex that reveal aspects of the trafficking or



1 exploitation, such as behavior patterns, meeting times, payments or  
2 examples of the trafficker exerting coercion over the petitioner.

3 (e) Upon request of the petitioner, all hearings conducted pursuant to  
4 this section shall be conducted in camera, by two-way electronic audio-  
5 video communication between the petitioner and the judge in lieu of  
6 personal presence of the petitioner or the petitioner's attorney in the  
7 courtroom from any location, or both. In addition, upon the request of the  
8 petitioner, the court shall not disclose or open to public inspection any  
9 information identifying the victim or alleged victim of human trafficking,  
10 aggravated human trafficking or commercial sexual exploitation of a child.  
11 Nothing in this subsection shall prohibit the victim or alleged victim from  
12 voluntarily disclosing such victim's identity. Information regarding the  
13 victim or alleged victim that is sealed pursuant to this subsection shall be  
14 disclosed only to the following:

15 (1) A judge of the district court and members of the staff of the court  
16 designated by the judge;

17 (2) parties to the proceedings and their attorneys;

18 (3) with the consent of the victim or alleged victim, any individual or  
19 any public or private agency or institution providing educational, medical  
20 or mental health services to the victim or alleged victim;

21 (4) law enforcement officers or county or district attorneys, or their  
22 staff, when necessary for the discharge of their official duties; and

23 (5) any other person when authorized by a court order, subject to any  
24 conditions imposed by the order.

25 (f) An order setting aside a conviction or diversion agreement under  
26 this section shall:

27 (1) Nullify the conviction or diversion agreement;

28 (2) deem the conviction or diversion agreement to have been vacated  
29 due to a substantive defect in the underlying criminal proceedings; and

30 (3) remove all civil disabilities and disqualifications imposed as a  
31 result of the conviction or diversion agreement.

32 (g) Upon entry of an order setting aside a conviction or diversion  
33 agreement under this section:

34 (1) The court shall order the conviction or diversion agreement and  
35 related arrest records expunged and purged from all applicable state and  
36 federal systems pursuant to this subsection. The court shall enter the order  
37 regardless of whether the petitioner has prior criminal convictions;

38 (2) the court shall direct the Kansas bureau of investigation to purge  
39 the conviction or diversion and arrest information from the criminal justice  
40 information system central repository and all applicable state and federal  
41 databases. The clerk of the court shall send a certified copy of the order to  
42 the Kansas bureau of investigation, which shall carry out the order and  
43 shall notify the federal bureau of investigation, the secretary of corrections

1 and any other criminal justice agency that may have a record of the  
2 conviction or diversion and arrest. The Kansas bureau of investigation  
3 shall provide confirmation of such action to the court; and

4 (3) the petitioner shall be treated as not having been arrested,  
5 convicted or diverted for the crime.

6 (h) This section shall be part of and supplemental to the Kansas  
7 criminal code.

8 Sec. 2. This act shall take effect and be in force from and after its  
9 publication in the statute book.