

**REPORT OF THE JUDICIAL COUNCIL  
CRIMINAL LAW ADVISORY COMMITTEE ON  
EXPUNGEMENT AND UNPAID COSTS, FEES, FINES, AND RESTITUTION  
December 11, 2020**

In November 2019, Christine Campbell, Kansas Legal Services' Statewide Pro Bono Director, asked the Judicial Council to evaluate the impact unpaid fines and fees have on expungement and consider whether outstanding costs, fees, fines, or restitution should be a reason to deny expungement. On December 13, 2019, the Judicial Council referred the study to the Criminal Law Advisory Committee (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

**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

## **DISCUSSION**

### *Expungement of Adult Convictions*

#### *Waiting Period*

Kansas statutes authorize the expungement of an adult conviction and related arrest records in K.S.A. 2010 Supp. 12-4516 (municipal court) and K.S.A. 2019 Supp. 21-6614 (district court). Depending on the type of conviction, both statutes require a waiting period. A person may not file a petition for expungement until a certain number of years (1, 3, 5 or 10 years) have passed 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.”<sup>1</sup> In practice, the requirement that the person “satisfied the sentence imposed” is commonly interpreted to include the satisfaction of all fines, fees, court costs, and restitution. The Committee acknowledged that fines and restitution orders are, by definition, part of a person’s sentence.<sup>2</sup> However, the Committee agreed this can be problematic within the limited context of expungements.

For example, if a person ordered to serve a period of probation for a misdemeanor battery successfully completes and is released from probation, and pays all fines, fees, court costs, and restitution in August 2015, then under K.S.A. 21-6614(a), the person’s waiting period begins in August 2015. The person could petition for expungement of the misdemeanor battery conviction three years later in September 2018. However, if the person is released from probation in August 2015, but does not finish paying off the fines, fees, court costs, and restitution until January 2020, the person did not “satisfy the sentence imposed” until January 2020. If the person’s waiting period does not begin until January 2020, the person cannot file a petition for expungement until February 2023.

The Committee agreed that requiring the payment of all fines, fees, court costs, and restitution before the “waiting period” begins is a heavy burden on indigent offenders. Often, the record of the conviction or diversion prevents the person from obtaining a job that would

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<sup>1</sup> The Committee recognized that depending on the case, a person’s failure to pay fines, fees, court costs, or restitution may prevent the person from being discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence. Failure to be discharged would prevent the expungement waiting period from beginning. The terms of probation, community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence are determined based on the individual facts of each case and vary across the state. The Committee decided against recommending any amendments regarding unpaid costs, fines, fees, or restitution in statutes governing probation, community correctional services programs, parole, postrelease supervision, conditional release or a suspended sentence.

<sup>2</sup> See e.g. K.S.A. 2019 Supp. 8-1567 (statute requires the court to order a monetary fine as part of the sentence for driving under the influence); and see *State v. Hall*, 298 Kan. 978, 983, 319 P.3d 506 (2014) (“Restitution constitutes part of a criminal defendant’s sentence”).

then enable the person to pay off the outstanding debt. The Committee unanimously recommends K.S.A. 2019 Supp. 12-4516 and 21-6614 include a section stating: “For the purposes of this section, the determination of when the person satisfied the sentence imposed excludes the payment of costs, fees, fines and restitution.” The Committee’s recommended amendments are on pages 14 and 24.

#### *Ruling on Expungement*

Once the waiting period has passed, a person may petition the court for expungement. K.S.A. 2019 Supp. 12-4516(h) and 21-6614(h) state that the court shall order the expungement if (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. The court has discretion when evaluating whether the person’s circumstances and behavior warrant the expungement and whether the expungement is consistent with the public welfare.

The Committee agreed the court should not use outstanding costs, fines, fees, and restitutions as an automatic bar to expungement. Instead, the Committee recommends the statute require the court’s evaluation of the petitioner’s circumstances and behavior include the petitioner’s ability and willingness to pay. The Committee unanimously agreed that (1) expungement should not be denied due to the petitioner’s inability to pay costs, fees, fines, or restitution; and (2) an unwillingness to pay may be considered as a factor in denying expungement.

The Committee recommends the following subsection be added to K.S.A. 2019 Supp. 12-4516(h) and 21-6614(h):

“The court shall not deny the petition for expungement due to the petitioner’s inability to pay outstanding costs, fees, fines or restitution. The petitioner’s unwillingness, rather than inability, to pay such costs, fees, fines or restitution may be considered as a factor in denying the petition for expungement.”

The Committee’s recommended amendments are on pages 9 and 19.

#### *Payment of Outstanding Debt*

While the Committee did not want outstanding costs, fines, fees, and restitution to be an automatic bar to expungement, the Committee agreed that the expungement should not alter or remove the petitioner’s responsibility to pay the outstanding debt. The Committee recommends K.S.A. 2019 Supp. 12-4516(i) and 21-6614(i) include a clear statement that an

expungement does not relieve a defendant's responsibility to satisfy any outstanding costs, fees, fines, or restitution. The Committee's recommended amendments are on pages 11 and 21.

#### *Collection of Outstanding Debt*

Generally, when a record is expunged, it is sealed and only accessible by a limited number of people in specific circumstances. In order to make sure the expungement does not prevent the future collection of the outstanding costs, fees, fines, or restitution, the Committee recommends K.S.A. 2019 Supp. 12-4516(i) and 21-6614(i) include a subsection allowing limited access to documents and information regarding the outstanding costs, fees, fines, or restitution for the purpose of collecting the debts.

The Committee recommends the subsection authorize access for the petitioner, the clerk of the court, the agent who is hired by the court to provide collection services, anyone to whom the petitioner was ordered to pay restitution in the case, and an attorney authorized to act on behalf of the listed individuals. The Committee also recommends that the list include a provision allowing the court to authorize access to someone not otherwise listed if the court determines that access to the documents or information pertaining to the outstanding costs, fees, fines, or restitution is necessary for the purposes of collecting the outstanding debt.

The Committee's recommended amendments to K.S.A. 2019 Supp. 12-4516 and 21-6614 are on pages 11 and 21.

#### *Expungement of Juvenile Adjudication*

The Committee reviewed the process for expunging a juvenile adjudication as provided in K.S.A. 2019 Supp. 38-2312. The Committee recognized the importance of expungement of juvenile adjudications even if there are outstanding costs, fines, fees, or restitution. Because the Committee members do not regularly handle juvenile adjudication expungements, the Committee reached out to Kansas Legal Services, and two members of the Judicial Council's Juvenile Offender/Child In Need of Care Advisory Committee who are familiar with juvenile offender related matters to gather information about juvenile adjudication expungement and the issue of outstanding fines, fees, court costs, or restitution. The feedback indicated that outstanding costs, fines, fees, and restitution can stand in the way of an expungement.

The Committee agreed that it did not have the expertise or necessary familiarity with juvenile offender cases and expungement statutes to make specific statutory recommendations. The Committee strongly recommends the Judicial Council refer this study to the Juvenile Offender/Child In Need of Care Advisory Committee to consider whether outstanding costs, fines, fees, and restitution should be a reason to deny juvenile adjudication expungements.

During the Committee's discussion with Kansas Legal Services, Kansas Legal Services identified an issue with K.S.A. 2019 Supp. 38-2312(e)(1)(B), which sets out the eligibility requirements for a juvenile adjudication expungement. K.S.A. 2019 Supp. 38-2312(e)(1) sets out the requirements for expungement. Subsection (e)(1)(B) states that the court shall order the expungement if, "since the final discharge of the juvenile, the juvenile has not been convicted of any felony or of a misdemeanor other than a traffic offense or adjudicated as a juvenile offender . . . and no proceedings are pending seeking such a conviction or adjudication[.]" The statute considers the petitioner's entire criminal history. Unlike the adult expungement statutes, the juvenile expungement statute does not limit the review of the petitioner's criminal history to the two years preceding the filing of the petition for expungement.

Because the juvenile adjudication expungement statutes require a review of the petitioner's entire criminal history without any limiting timeframe, prior adjudications and convictions create a bigger barrier to expungement of a juvenile adjudication than an adult conviction. Kansas Legal Services recommended a similar two-year lookback timeframe be added to the juvenile expungement statute. If the Judicial Council refers the study of outstanding fines, fees, court costs, and restitution and juvenile adjudication expungement to the Juvenile Offender/Child In Need of Care Advisory Committee, the Committee recommends the Juvenile Offender/Child In Need of Care Advisory Committee also consider this issue.

### **RECOMMENDATION**

The Committee recommends the adult expungement statutes, K.S.A. 2019 Supp. 12-4516 and 21-6614 be amended in the following ways:

(1) to allow the waiting period to begin before the person has completed payment of costs, fees, fines, or restitution;

(2) to prohibit courts from denying an expungement due to the petitioner's inability to pay costs, fees, fines, or restitution;

(3) to require payment of costs, fines, fees, and restitution after expungement; and

(4) to allow certain people to access documents and information regarding the costs, fines, fees, and restitution after the expungement for the purpose of collecting the debt.

The Committee's recommended amendments to K.S.A. 2019 Supp. 12-4516 and 21-6614 begin on page 7.

Due to the Committee's lack of expertise in the area of juvenile offender adjudications and expungements, the Committee recommends the Judicial Council refer the study to the Juvenile Offender/Child In Need of Care Advisory Committee to consider whether outstanding costs, fines, fees, and restitution should be a reason to deny juvenile adjudication expungements.

While the Committee recommends further study of juvenile expungements by the Juvenile Offender/Child In Need of Care Advisory Committee, the Committee recommends its proposed amendments to the adult expungement statutes be considered by the legislature as soon as possible. The Committee recommends the Judicial Council request introduction of the Committee's proposed statutory amendments in the upcoming legislative session rather than waiting for any recommendations regarding juvenile adjudication expungement from the Juvenile Offender/Child In Need of Care Advisory Committee.

## **MUNICIPAL CONVICTION EXPUNGEMENT**

### **K.S.A. 2019 Supp. 12-4516. Expungement of certain convictions, arrest records and diversion agreements**

(a)(1) Except as provided in subsections (b), (c), (d), (e) and (f), any person who has been convicted of a violation of a city ordinance of this state may petition the convicting court for the expungement of such conviction and related arrest records if three or more years have elapsed since the person:

(A) Satisfied the sentence imposed; or

(B) was discharged from probation, parole or a suspended sentence.

(2) Except as provided in subsections (b), (c), (d), (e) and (f), any person who has fulfilled the terms of a diversion agreement based on a violation of a city ordinance of this state may petition the 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 a violation of any ordinance that is prohibited by either K.S.A. 12-16,134(a) or (b), and amendments thereto, and which was adopted prior to July 1, 2014, 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.

(c) Any person convicted of the violation of a city ordinance which would also constitute a violation of K.S.A. 21-3512, prior to its repeal, or 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, parole, 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.

(d) 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, parole, conditional release or a suspended sentence, if such person was convicted of the violation of a city ordinance which would also constitute:

(1) Vehicular homicide, as defined by K.S.A. 21-3405, prior to its repeal, or K.S.A. 21-5406, and amendments thereto;

(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;

(3) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto;

(4) a violation of the provisions of K.S.A. 8-142 *Fifth*, and amendments thereto, relating to fraudulent applications;

(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. 8-1602, 8-1603, prior to its repeal, or 8-1604, and amendments thereto;

(7) a violation of 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)(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, parole, conditional release or a suspended sentence, if such person was convicted of a first violation of a city ordinance which would also constitute a first violation of K.S.A. 8-1567, and amendments thereto.

(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, parole, conditional release or a suspended sentence, if such person was convicted of a second or subsequent violation of a city ordinance which would also constitute a second or subsequent violation of K.S.A. 8-1567, and amendments thereto.

(3) The provisions of this subsection shall apply to all violations committed on or after July 1, 2006.



(f) There shall be no expungement of convictions or diversions for a violation of a city ordinance which would also constitute a violation of K.S.A. 8-2,144, and amendments thereto.

(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 prosecuting attorney 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 agency or diverting authority.

(2) A municipal court may prescribe a fee to be charged as costs for a person petitioning for an order of expungement pursuant to this section.

(3) 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.

(h)(1) At the hearing on the petition, the court shall order the petitioner's arrest record, conviction or diversion expunged if the court finds that:

~~(1A)~~ 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;

~~(2B)~~ the circumstances and behavior of the petitioner warrant the expungement; and

~~(3C)~~ the expungement is consistent with the public welfare.

(2) The court shall not deny the petition for expungement due to the petitioner's inability to pay outstanding costs, fees, fines or restitution. The petitioner's unwillingness, rather than inability, to pay such costs, fees, fines or restitution may be considered as a factor in denying the petition for expungement.

(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) for applications received on and after July 1, 2006, 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) for applications received on and after July 1, 2016, 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 arrest, conviction or diversion is to be disclosed; ~~and~~

(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) the petitioner shall continue to be responsible to fully satisfy any outstanding costs, fees, fines and restitution related to the arrest, conviction or diversion. For the purpose of collecting such outstanding costs, fees, fines or restitution, the following persons shall have access to any documents and information regarding the outstanding costs, fees, fines or restitution notwithstanding any expungement:

(A) The clerk of the court;

(B) a contracting agent as defined in K.S.A. 12-4119, and amendments thereto;

(C) the petitioner and the petitioner's attorney;

(D) the beneficiary under an order of restitution as defined in K.S.A. 12-4119, and amendments thereto, and such beneficiary's attorney; or

(E) any other person as authorized by a court order if the court finds it is necessary for the person to have access to the documents and information for the purpose of collecting the outstanding costs, fees, fines or restitution.

(j) Whenever a person is convicted of an ordinance violation, pleads guilty and pays a fine for such a violation, is placed on parole or probation or is granted a suspended sentence for such a violation, 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.

(k) Subject to the disclosures required pursuant to subsection (i), 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 an offense has been expunged under this statute may state that such person has never been arrested, convicted or diverted of such offense.

(l) 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 prosecuting attorney, 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 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-state gaming compact;

(12) 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;

(13) 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;

(14) the Kansas sentencing commission;

(15) 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; or

(16) 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.

(m) For the purposes of this section, the determination of when the person satisfied the sentence imposed excludes the payment of costs, fees, fines and restitution.

## **DISTRICT COURT CONVICTION EXPUNGEMENT**

### **K.S.A. 2019 Supp. 21-6614. Expungement of certain convictions, arrest records and diversion agreements**

(a)(1) Except as provided in subsections (b), (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), (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.

(c) Except as provided in subsections (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.

(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 (d)(2) shall not apply to violations committed on or after July 1, 2014, but prior to July 1, 2015.

(e) 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.

(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.

(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.

(h)(1) At the hearing on the petition, the court shall order the petitioner's arrest record, conviction or diversion expunged if the court finds that:

~~(A1)~~ 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;

~~(B2)~~ the circumstances and behavior of the petitioner warrant the expungement; and

~~(C3)~~ the expungement is consistent with the public welfare.

(2) The court shall not deny the petition for expungement due to the petitioner's inability to pay outstanding costs, fees, fines or restitution. The petitioner's unwillingness, rather than inability, to pay such costs, fees, fines or restitution may be considered as a factor in denying the petition for expungement.

(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;~~;~~  
and

(6) the petitioner shall continue to be responsible to fully satisfy any outstanding costs, fees, fines and restitution related to the arrest, conviction or diversion. For the purpose of collecting such outstanding costs, fees, fines or restitution, the following persons shall have access to any documents and information regarding the outstanding costs, fees, fines or restitution notwithstanding any expungement:

(A) The clerk of the court;

(B) a contracting agent as defined in K.S.A. 20-169, and amendments thereto;

(C) the petitioner and the petitioner's attorney;

(D) the beneficiary under an order of restitution as defined in K.S.A. 20-169, and amendments thereto, and such beneficiary's attorney;

(E) any other person as authorized by a court order if the court finds it is necessary for the person to have access to the documents and information for the purpose of collecting the outstanding costs, fees, fines or restitution.

(j) 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.

(k)(1) Subject to the disclosures required pursuant to subsection (i), 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 (k)(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.

(l) 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.

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

(n) For the purposes of this section, the determination of when the person satisfied the sentence imposed excludes the payment of costs, fees, fines and restitution.