

HOUSE BILL No. 2603

By Committee on Corrections and Juvenile Justice

2-2

9 AN ACT concerning juvenile records; relating to expungement; amend-
10 ing K.S.A. 2009 Supp. 38-2312 and repealing the existing section.

11

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

13 Section 1. K.S.A. 2009 Supp. 38-2312 is hereby amended to read as
14 follows: 38-2312. (a) Except as provided in subsection (b), any records or
15 files specified in this code concerning a juvenile may be expunged upon
16 application to a judge of the court of the county in which the records or
17 files are maintained, *or automatically pursuant to section 2, and amend-*
18 *ments thereto.* The application for expungement may be made by the
19 juvenile, if 18 years of age or older or, if the juvenile is less than 18 years
20 of age, by the juvenile's parent or next friend.

21 (b) There shall be no expungement of records or files concerning acts
22 committed by a juvenile which, if committed by an adult, would constitute
23 a violation of K.S.A. 21-3401, and amendments thereto, murder in the
24 first degree, K.S.A. 21-3402, and amendments thereto, murder in the
25 second degree, K.S.A. 21-3403, and amendments thereto, voluntary man-
26 slaughter, K.S.A. 21-3404, and amendments thereto, involuntary man-
27 slaughter, K.S.A. 21-3439, and amendments thereto, capital murder,
28 K.S.A. 21-3442, and amendments thereto, involuntary manslaughter
29 while driving under the influence of alcohol or drugs, K.S.A. 21-3502,
30 and amendments thereto, rape, K.S.A. 21-3503, and amendments
31 thereto, indecent liberties with a child, K.S.A. 21-3504, and amendments
32 thereto, aggravated indecent liberties with a child, K.S.A. 21-3506, and
33 amendments thereto, aggravated criminal sodomy, K.S.A. 21-3510, and
34 amendments thereto, indecent solicitation of a child, K.S.A. 21-3511, and
35 amendments thereto, aggravated indecent solicitation of a child, K.S.A.
36 21-3516, and amendments thereto, sexual exploitation, K.S.A. 21-3603,
37 and amendments thereto, aggravated incest, K.S.A. 21-3608, and amend-
38 ments thereto, endangering a child, K.S.A. 21-3609, and amendments
39 thereto, abuse of a child, or which would constitute an attempt to commit
40 a violation of any of the offenses specified in this subsection.

41 (c) When a petition for expungement is filed, the court shall set a
42 date for a hearing on the petition and shall give notice thereof to the
43 county or district attorney. The petition shall state: (1) The juvenile's full

1 name; (2) the full name of the juvenile as reflected in the court record,
2 if different than (1); (3) the juvenile's sex and date of birth; (4) the offense
3 for which the juvenile was adjudicated; (5) the date of the trial; and (6)
4 the identity of the trial court. There shall be no docket fee for filing a
5 petition pursuant to this section. All petitions for expungement shall be
6 docketed in the original action. Any person who may have relevant infor-
7 mation about the petitioner may testify at the hearing. The court may
8 inquire into the background of the petitioner.

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

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

13 (B) since the final discharge of the juvenile, the juvenile has not been
14 convicted of a felony or of a misdemeanor other than a traffic offense or
15 adjudicated as a juvenile offender under the revised Kansas juvenile jus-
16 tice code, *K.S.A. 38-1601 et seq., and amendments thereto*, and no pro-
17 ceedings are pending seeking such a conviction or adjudication; and

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

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

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

33 (f) Copies of any order made pursuant to subsection (a) or (c) shall
34 be sent to each public officer and agency in the county having possession
35 of any records or files ordered to be expunged. If the officer or agency
36 fails to comply with the order within a reasonable time after its receipt,
37 the officer or agency may be adjudged in contempt of court and punished
38 accordingly.

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

41 (h) Nothing in this section shall be construed to prohibit the main-
42 tenance of information relating to an offense after records or files con-
43 cerning the offense have been expunged if the information is kept in a

- 1 manner that does not enable identification of the juvenile.
- 2 (i) Nothing in this section shall be construed to permit or require
3 expungement of files or records related to a child support order registered
4 pursuant to the revised Kansas juvenile justice code.
- 5 (j) Whenever the records or files of any adjudication have been ex-
6 punged under the provisions of this section, the custodian of the records
7 or files of adjudication relating to that offense shall not disclose the ex-
8 istence of such records or files, except when requested by:
- 9 (1) The person whose record was expunged;
- 10 (2) a private detective agency or a private patrol operator, and the
11 request is accompanied by a statement that the request is being made in
12 conjunction with an application for employment with such agency or op-
13 erator by the person whose record has been expunged;
- 14 (3) a court, upon a showing of a subsequent conviction of the person
15 whose record has been expunged;
- 16 (4) the secretary of social and rehabilitation services, or a designee of
17 the secretary, for the purpose of obtaining information relating to em-
18 ployment in an institution, as defined in K.S.A. 76-12a01, and amend-
19 ments thereto, of the department of social and rehabilitation services of
20 any person whose record has been expunged;
- 21 (5) a person entitled to such information pursuant to the terms of the
22 expungement order;
- 23 (6) the Kansas lottery, and the request is accompanied by a statement
24 that the request is being made to aid in determining qualifications for
25 employment with the Kansas lottery or for work in sensitive areas within
26 the Kansas lottery as deemed appropriate by the executive director of the
27 Kansas lottery;
- 28 (7) the governor or the Kansas racing commission, or a designee of
29 the commission, and the request is accompanied by a statement that the
30 request is being made to aid in determining qualifications for executive
31 director of the commission, for employment with the commission, for
32 work in sensitive areas in parimutuel racing as deemed appropriate by
33 the executive director of the commission or for licensure, renewal of
34 licensure or continued licensure by the commission; or
- 35 (8) the Kansas sentencing commission.
- 36 New Sec. 2. (a) Expungement of juvenile records and files shall oc-
37 cur automatically if the following conditions are met:
- 38 (1) The individual is 18 years of age or older;
- 39 (2) the individual's criminal history consists of no more than one con-
40 viction or adjudication;
- 41 (3) the individual has not been convicted or adjudicated of a violation
42 provided in subsection (b) of K.S.A. 38-2312, and amendments thereto;
- 43 (4) two years have passed since the disposition of the previous con-

1 viction or adjudication;

2 (5) the individual has not been convicted of a felony or of a misde-
3 meanor other than a traffic offense or adjudicated as a juvenile offender
4 under the revised Kansas juvenile justice code, K.S.A. 38-1601 et seq.,
5 and amendments thereto;

6 (6) there are no proceedings pending against the individual seeking
7 a conviction or adjudication; and

8 (7) the circumstances and behavior of the individual warrant
9 expungement.

10 (b) The administrative office of the courts shall provide a report to
11 the juvenile courts of those individuals whose records may be eligible for
12 expungement. The juvenile court shall verify that the individual meets
13 the criteria provided in this subsection, and upon verification send an
14 order of expungement to every public officer and agency in the county
15 having possession of any records or files ordered to be expunged.

16 Sec. 3. K.S.A. 2009 Supp. 38-2312 is hereby repealed.

17 Sec. 4. This act shall take effect and be in force from and after its
18 publication in the statute book.