

HOUSE BILL No. 2724

By Committee on Judiciary

Requested by Joe Molina on behalf of the Kansas Bar Association

2-5

1 AN ACT concerning courts; relating to docket fees; authorizing judges to
2 waive the docket fee in expungement cases by reviewing and granting a
3 poverty affidavit; removing the restriction on service of process
4 pending such determination of poverty; amending K.S.A. 12-4516, 21-
5 6614 and 60-2001 and repealing the existing sections.
6

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

8 Section 1. K.S.A. 12-4516 is hereby amended to read as follows: 12-
9 4516. (a) (1) Except as provided in subsections (b), (c), (d), (e) and (f), any
10 person who has been convicted of a violation of a city ordinance of this
11 state may petition the convicting court for the expungement of such
12 conviction and related arrest records if three or more years have elapsed
13 since the person:

14 (A) Satisfied the sentence imposed; or

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

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

22 (b) Any person convicted of a violation of any ordinance that is
23 prohibited by either K.S.A. 12-16,134(a) or (b), and amendments thereto,
24 and which was adopted prior to July 1, 2014, or who entered into a
25 diversion agreement in lieu of further criminal proceedings for such
26 violation, may petition the convicting court for the expungement of such
27 conviction or diversion agreement and related arrest records.

28 (c) Any person convicted of the violation of a city ordinance which
29 would also constitute a violation of K.S.A. 21-3512, prior to its repeal, or a
30 violation of K.S.A. 21-6419, and amendments thereto, or who entered into
31 a diversion agreement in lieu of further criminal proceedings for such
32 violation, may petition the convicting court for the expungement of such
33 conviction or diversion agreement and related arrest records if:

34 (1) One or more years have elapsed since the person satisfied the
35 sentence imposed or the terms of a diversion agreement or was discharged

1 from probation, parole, conditional release or a suspended sentence; and

2 (2) such person can prove they were acting under coercion caused by
3 the act of another. For purposes of this subsection, "coercion" means:
4 Threats of harm or physical restraint against any person; a scheme, plan or
5 pattern intended to cause a person to believe that failure to perform an act
6 would result in bodily harm or physical restraint against any person; or the
7 abuse or threatened abuse of the legal process.

8 (d) No person may petition for expungement until five or more years
9 have elapsed since the person satisfied the sentence imposed or the terms
10 of a diversion agreement or was discharged from probation, parole,
11 conditional release or a suspended sentence, if such person was convicted
12 of the violation of a city ordinance which would also constitute:

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

15 (2) driving while the privilege to operate a motor vehicle on the
16 public highways of this state has been canceled, suspended or revoked, as
17 prohibited by K.S.A. 8-262, and amendments thereto;

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

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

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

24 (6) failing to stop at the scene of an accident and perform the duties
25 required by K.S.A. 8-1602, 8-1603, prior to its repeal, or 8-1604, and
26 amendments thereto;

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

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

30 (e) (1) No person may petition for expungement until five or more
31 years have elapsed since the person satisfied the sentence imposed or the
32 terms of a diversion agreement or was discharged from probation, parole,
33 conditional release or a suspended sentence, if such person was convicted
34 of a first violation of a city ordinance which would also constitute a first
35 violation of K.S.A. 8-1567, and amendments thereto.

36 (2) No person may petition for expungement until 10 or more years
37 have elapsed since the person satisfied the sentence imposed or was
38 discharged from probation, parole, conditional release or a suspended
39 sentence, if such person was convicted of a second or subsequent violation
40 of a city ordinance which would also constitute a second or subsequent
41 violation of K.S.A. 8-1567, and amendments thereto.

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

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

4 (g) (1) When a petition for expungement is filed, the court shall set a
5 date for a hearing of such petition and shall cause notice of such hearing to
6 be given to the prosecuting attorney and the arresting law enforcement
7 agency. The petition shall state the:

8 (A) Defendant's full name;

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

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

12 (D) crime for which the defendant was arrested, convicted or
13 diverted;

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

15 (F) identity of the convicting court, arresting law enforcement agency
16 or diverting authority.

17 (2) A municipal court may prescribe a fee to be charged as costs for a
18 person petitioning for an order of expungement pursuant to this section. *A*
19 *poverty affidavit may be filed in lieu of such fee as established in K.S.A.*
20 *60-2001, and amendments thereto.*

21 (3) Any person who may have relevant information about the
22 petitioner may testify at the hearing. The court may inquire into the
23 background of the petitioner and shall have access to any reports or
24 records relating to the petitioner that are on file with the secretary of
25 corrections or the prisoner review board.

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

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

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

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

34 (i) When the court has ordered an arrest record, conviction or
35 diversion expunged, the order of expungement shall state the information
36 required to be contained in the petition. The clerk of the court shall send a
37 certified copy of the order of expungement to the Kansas bureau of
38 investigation which shall notify the federal bureau of investigation, the
39 secretary of corrections and any other criminal justice agency which may
40 have a record of the arrest, conviction or diversion. If the case was
41 appealed from municipal court, the clerk of the district court shall send a
42 certified copy of the order of expungement to the municipal court. The
43 municipal court shall order the case expunged once the certified copy of

1 the order of expungement is received. After the order of expungement is
2 entered, the petitioner shall be treated as not having been arrested,
3 convicted or diverted of the crime, except that:

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

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

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

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

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

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

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

34 (F) upon application for a commercial driver's license under K.S.A.
35 8-2,125 through 8-2,142, and amendments thereto;

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

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

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

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

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

7 (L) for applications received on and after July 1, 2016, to aid in
8 determining the petitioner's qualifications for a license to act as a bail
9 enforcement agent pursuant to K.S.A. 75-7e01 through 75-7e09 and
10 K.S.A. 50-6,141, and amendments thereto;

11 (3) the court, in the order of expungement, may specify other
12 circumstances under which the arrest, conviction or diversion is to be
13 disclosed; and

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

17 (j) Whenever a person is convicted of an ordinance violation, pleads
18 guilty and pays a fine for such a violation, is placed on parole or probation
19 or is granted a suspended sentence for such a violation, the person shall be
20 informed of the ability to expunge the arrest records or conviction.
21 Whenever a person enters into a diversion agreement, the person shall be
22 informed of the ability to expunge the diversion.

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

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

33 (1) The person whose record was expunged;

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

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

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

1 whose record has been expunged;

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

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

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

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

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

26 (10) the Kansas racing and gaming commission, or a designee of the
27 commission, and the request is accompanied by a statement that the
28 request is being made to aid in determining qualifications of the following
29 under the Kansas expanded lottery act:

30 (A) Lottery gaming facility managers and prospective managers,
31 racetrack gaming facility managers and prospective managers, licensees
32 and certificate holders; and

33 (B) their officers, directors, employees, owners, agents and
34 contractors;

35 (11) the state gaming agency, and the request is accompanied by a
36 statement that the request is being made to aid in determining
37 qualifications:

38 (A) To be an employee of the state gaming agency; or

39 (B) to be an employee of a tribal gaming commission or to hold a
40 license issued pursuant to a tribal-state gaming compact;

41 (12) 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 (13) the attorney general, and the request is accompanied by a
5 statement that the request is being made to aid in determining
6 qualifications for a license to:

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

9 (B) act as a bail enforcement agent pursuant to K.S.A. 75-7e01
10 through 75-7e09 and K.S.A. 50-6,141, and amendments thereto;

11 (14) the Kansas sentencing commission;

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

16 (16) a law enforcement agency and the request is accompanied by a
17 statement that the request is being made to aid in determining eligibility
18 for employment as a law enforcement officer as defined by K.S.A. 22-
19 2202, and amendments thereto.

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

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

39 (3) Notwithstanding the provisions of subsection (a)(1), and except as
40 provided in subsections (b), (c), (d), (e) and (f), any person who has
41 completed the requirements of a specialty court program established
42 pursuant to K.S.A. 20-173, and amendments thereto, may petition the
43 district court for the expungement of the conviction and related arrest

1 records. The court may waive all or part of the docket fee imposed for
2 filing a petition pursuant to this subsection.

3 (b) Any person convicted of prostitution, as defined in K.S.A. 21-
4 3512, prior to its repeal, convicted of a violation of K.S.A. 21-6419, and
5 amendments thereto, or who entered into a diversion agreement in lieu of
6 further criminal proceedings for such violation, may petition the
7 convicting court for the expungement of such conviction or diversion
8 agreement and related arrest records if:

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

13 (2) such person can prove they were acting under coercion caused by
14 the act of another. For purposes of this subsection, "coercion" means:
15 Threats of harm or physical restraint against any person; a scheme, plan or
16 pattern intended to cause a person to believe that failure to perform an act
17 would result in bodily harm or physical restraint against any person; or the
18 abuse or threatened abuse of the legal process.

19 (c) Except as provided in subsections (e) and (f), no person may
20 petition for expungement until five or more years have elapsed since the
21 person satisfied the sentence imposed or the terms of a diversion
22 agreement or was discharged from probation, a community correctional
23 services program, parole, postrelease supervision, conditional release or a
24 suspended sentence, if such person was convicted of a class A, B or C
25 felony, or for crimes committed on or after July 1, 1993, if convicted of an
26 off-grid felony or any felony ranked in severity levels 1 through 5 of the
27 nondrug grid, or for crimes committed on or after July 1, 1993, but prior to
28 July 1, 2012, any felony ranked in severity levels 1 through 3 of the drug
29 grid, or for crimes committed on or after July 1, 2012, any felony ranked
30 in severity levels 1 through 4 of the drug grid, or:

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

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

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

41 (4) violating the provisions of K.S.A. 8-142 *Fifth*, and amendments
42 thereto, relating to fraudulent applications or violating the provisions of a
43 law of another state that is in substantial conformity with that statute;

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

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

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

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

10 (d) (1) No person may petition for expungement until five or more
11 years have elapsed since the person satisfied the sentence imposed or the
12 terms of a diversion agreement or was discharged from probation, a
13 community correctional services program, parole, postrelease supervision,
14 conditional release or a suspended sentence, if such person was convicted
15 of a first violation of K.S.A. 8-1567, and amendments thereto, including
16 any diversion for such violation.

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

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

27 (e) There shall be no expungement of convictions for the following
28 offenses or of convictions for an attempt to commit any of the following
29 offenses:

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

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

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

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

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

43 (6) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior

1 to its repeal, or K.S.A. 21-5510, and amendments thereto;

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

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

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

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

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

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

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

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

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

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

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

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

29 (19) any conviction for any offense in effect at any time prior to July
30 1, 2011, that is comparable to any offense as provided in this subsection.

31 (f) Except as provided in K.S.A. 22-4908, and amendments thereto,
32 for any offender who is required to register as provided in the Kansas
33 offender registration act, K.S.A. 22-4901 et seq., and amendments thereto,
34 there shall be no expungement of any conviction or any part of the
35 offender's criminal record while the offender is required to register as
36 provided in the Kansas offender registration act.

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

41 (A) Defendant's full name;

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

- 1 (C) defendant's sex, race and date of birth;
- 2 (D) crime for which the defendant was arrested, convicted or
- 3 diverted;
- 4 (E) date of the defendant's arrest, conviction or diversion; and
- 5 (F) identity of the convicting court, arresting law enforcement
- 6 authority or diverting authority.

7 (2) Except as otherwise provided by law, a petition for expungement
8 shall be accompanied by a docket fee in the amount of \$176. *A poverty*
9 *affidavit may be filed in lieu of a docket fee as established in K.S.A. 60-*
10 *2001, and amendments thereto.* On and after July 1, 2019, through June
11 30, 2025, the supreme court may impose a charge, not to exceed \$19 per
12 case, to fund the costs of non-judicial personnel. The charge established in
13 this section shall be the only fee collected or moneys in the nature of a fee
14 collected for the case. Such charge shall only be established by an act of
15 the legislature and no other authority is established by law or otherwise to
16 collect a fee.

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

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

25 (1) (A) The petitioner has not been convicted of a felony in the past
26 two years and no proceeding involving any such crime is presently
27 pending or being instituted against the petitioner if the petition is filed
28 under subsection (a)(1) or (a)(2); or

29 (B) no proceeding involving a felony is presently pending or being
30 instituted against the petitioner if the petition is filed under subsection (a)
31 (3);

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

34 (3) the expungement is consistent with the public welfare; and

35 (4) with respect to petitions seeking expungement of a felony
36 conviction, possession of a firearm by the petitioner is not likely to pose a
37 threat to the safety of the public.

38 (i) When the court has ordered an arrest record, conviction or
39 diversion expunged, the order of expungement shall state the information
40 required to be contained in the petition. The clerk of the court shall send a
41 certified copy of the order of expungement to the Kansas bureau of
42 investigation that shall notify the federal bureau of investigation, the
43 secretary of corrections and any other criminal justice agency that may

1 have a record of the arrest, conviction or diversion. If the case was
2 appealed from municipal court, the clerk of the district court shall send a
3 certified copy of the order of expungement to the municipal court. The
4 municipal court shall order the case expunged once the certified copy of
5 the order of expungement is received. After the order of expungement is
6 entered, the petitioner shall be treated as not having been arrested,
7 convicted or diverted of the crime, except that:

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

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

13 (A) In any application for licensure as a private detective, private
14 detective agency, certification as a firearms trainer pursuant to K.S.A. 75-
15 7b21, and amendments thereto, or employment as a detective with a
16 private detective agency, as defined by K.S.A. 75-7b01, and amendments
17 thereto; as security personnel with a private patrol operator, as defined by
18 K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined
19 in K.S.A. 76-12a01, and amendments thereto, of the Kansas department
20 for aging and disability services;

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

23 (C) to aid in determining the petitioner's qualifications for
24 employment with the Kansas lottery or for work in sensitive areas within
25 the Kansas lottery as deemed appropriate by the executive director of the
26 Kansas lottery;

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

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

38 (F) upon application for a commercial driver's license under K.S.A.
39 8-2,125 through 8-2,142, and amendments thereto;

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

42 (H) to aid in determining the petitioner's qualifications to be an
43 employee of a tribal gaming commission or to hold a license issued

1 pursuant to a tribal-state gaming compact;

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

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

7 (K) to aid in determining the petitioner's qualifications for a license to
8 act as a bail enforcement agent pursuant to K.S.A. 75-7e01 through 75-
9 7e09, and amendments thereto, and K.S.A. 50-6,141, and amendments
10 thereto;

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

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

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

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

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

32 (2) A person whose arrest record, conviction or diversion of a crime
33 that resulted in such person being prohibited by state or federal law from
34 possessing a firearm has been expunged under this statute shall be deemed
35 to have had such person's right to keep and bear arms fully restored. This
36 restoration of rights shall include, but not be limited to, the right to use,
37 transport, receive, purchase, transfer and possess firearms. The provisions
38 of this paragraph shall apply to all orders of expungement, including any
39 orders issued prior to July 1, 2021.

40 (l) Whenever the record of any arrest, conviction or diversion has
41 been expunged under the provisions of this section or under the provisions
42 of any other existing or former statute, the custodian of the records of
43 arrest, conviction, diversion and incarceration relating to that crime shall

1 not disclose the existence of such records, except when requested by:

2 (1) The person whose record was expunged;

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

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

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

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

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

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

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

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

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

1 (11) the Kansas sentencing commission;

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

7 (13) the Kansas securities commissioner or a designee of the
8 commissioner, and the request is accompanied by a statement that the
9 request is being made in conjunction with an application for registration as
10 a broker-dealer, agent, investment adviser or investment adviser
11 representative by such agency and the application was submitted by the
12 person whose record has been expunged;

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

17 (15) a law enforcement agency and the request is accompanied by a
18 statement that the request is being made to aid in determining eligibility
19 for employment as a law enforcement officer as defined by K.S.A. 22-
20 2202, and amendments thereto;

21 (16) (A) the attorney general and the request is accompanied by a
22 statement that the request is being made to aid in determining
23 qualifications for a license to act as a bail enforcement agent pursuant to
24 K.S.A. 75-7e01 through 75-7e09, and amendments thereto, and K.S.A. 50-
25 6,141, and amendments thereto; or

26 (B) the attorney general for any other purpose authorized by law,
27 except that an expungement record shall not be the basis for denial of a
28 license to carry a concealed handgun under the personal and family
29 protection act; or

30 (17) the Kansas bureau of investigation, for the purpose of
31 completing a person's criminal history record information within the
32 central repository, in accordance with K.S.A. 22-4701 et seq., and
33 amendments thereto.

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

36 (2) Upon the issuance of an order of expungement that resulted in the
37 restoration of a person's right to keep and bear arms, the Kansas bureau of
38 investigation shall report to the federal bureau of investigation that such
39 expunged record be withdrawn from the national instant criminal
40 background check system. The Kansas bureau of investigation shall
41 include such order of expungement in the person's criminal history record
42 for purposes of documenting the restoration of such person's right to keep
43 and bear arms.

1 Sec. 3. K.S.A. 60-2001 is hereby amended to read as follows: 60-
2 2001. (a) *Docket fee.* Except as otherwise provided by law, no case shall
3 be filed or docketed in the district court, whether original or appealed,
4 without payment of a docket fee in the amount of \$173 to the clerk of the
5 district court. Except as provided further, the docket fee established in this
6 subsection shall be the only fee collected or moneys in the nature of a fee
7 collected for the docket fee. Such fee shall only be established by an act of
8 the legislature and no other authority is established by law or otherwise to
9 collect a fee. On and after July 1, 2019, through June 30, 2025, the
10 supreme court may impose an additional charge, not to exceed \$22 per
11 docket fee, to fund the costs of non-judicial personnel.

12 (b) *Poverty affidavit in lieu of docket fee.* (1) *Effect.* In any case
13 where a plaintiff by reason of poverty is unable to pay a docket fee, and an
14 affidavit so stating is filed, no fee will be required. An inmate in the
15 custody of the secretary of corrections may file a poverty affidavit only if
16 the inmate attaches a statement disclosing the average account balance, or
17 the total deposits, whichever is less, in the inmate's trust fund for each
18 month in: (A) The six-month period preceding the filing of the action; or
19 (B) the current period of incarceration, whichever is shorter. Such
20 statement shall be certified by the secretary. On receipt of the affidavit and
21 attached statement, the court shall determine the initial fee to be assessed
22 for filing the action and in no event shall the court require an inmate to pay
23 less than \$3. The secretary of corrections is hereby authorized to disburse
24 money from the inmate's account to pay the costs as determined by the
25 court. If the inmate has a zero balance in such inmate's account, the
26 secretary shall debit such account in the amount of \$3 per filing fee as
27 established by the court until money is credited to the account to pay such
28 docket fee. Any initial filing fees assessed pursuant to this subsection shall
29 not prevent the court, pursuant to subsection (d), from taxing that
30 individual for the remainder of the amount required under subsection (a) or
31 this subsection.

32 (2) *Form of affidavit.* The affidavit provided for in this subsection
33 shall set forth a factual basis upon which the plaintiff alleges by reason of
34 poverty an inability to pay a docket fee, including, but not limited to, the
35 source and amount of the plaintiff's weekly income. Such affidavit shall be
36 signed and sworn to by the plaintiff under oath, before one who has
37 authority to administer the oath, under penalty of perjury, K.S.A. 21-5903,
38 and amendments thereto. The form of the affidavit shall be deemed
39 sufficient if in substantial compliance with the form set forth by the
40 judicial council.

41 (3) *Court review; grounds for dismissal; service of process.* The court
42 shall review any petition authorized for filing under this subsection. Upon
43 such review, if the court finds that the plaintiff's allegation of poverty is

1 untrue, the court shall direct the plaintiff to pay the docket fee or dismiss
2 the petition without prejudice. ~~Notwithstanding K.S.A. 60-301, and~~
3 ~~amendments thereto, service of process shall not issue unless the court~~
4 ~~grants leave following its review.~~

5 (c) *Disposition of fees.* The docket fees and the fees for service of
6 process shall be the only costs assessed in each case for services of the
7 clerk of the district court and the sheriff. For every person to be served by
8 the sheriff, the persons requesting service of process shall provide proper
9 payment to the clerk and the clerk of the district court shall forward the
10 service of process fee to the sheriff in accordance with K.S.A. 28-110, and
11 amendments thereto. The service of process fee, if paid by check or money
12 order, shall be made payable to the sheriff. Such service of process fee
13 shall be submitted by the sheriff at least monthly to the county treasurer
14 for deposit in the county treasury and credited to the county general fund.
15 The docket fee shall be disbursed in accordance with K.S.A. 20-362, and
16 amendments thereto.

17 (d) *Additional court costs.* Other fees and expenses to be assessed as
18 additional court costs shall be approved by the court, unless specifically
19 fixed by statute. Other fees shall include, but not be limited to, witness
20 fees, appraiser fees, fees for service of process, fees for depositions,
21 alternative dispute resolution fees, transcripts and publication, attorney
22 fees, court costs from other courts and any other fees and expenses
23 required by statute. All additional court costs shall be taxed and billed
24 against the parties as directed by the court. No sheriff in this state shall
25 charge any mileage for serving any papers or process.

26 Sec. 4. K.S.A. 12-4516, 21-6614 and 60-2001 are hereby repealed.

27 Sec. 5. This act shall take effect and be in force from and after its
28 publication in the statute book.