

## 2020 Kansas Statutes

### **22-2410. Expungement of arrest records; docket fee; disclosure limited upon filing of petition.**

(a) (1) Any person who has been arrested in this state may petition the district court for the expungement of such arrest record.

(2) (A) If a person has been arrested in this state as a result of mistaken identity or as a result of another person using the identifying information of the named person, and the charge against the named person is dismissed or not prosecuted, the prosecuting attorney or other judicial officer who ordered the dismissal or declined to prosecute shall provide notice to the court of such action and petition the district court for the expungement of such arrest record, and the court shall order the arrest record and subsequent court proceedings, if any, expunged and purged from all applicable state and federal systems pursuant to subsection (d).

(B) For purposes of this section, the term "mistaken identity" means the erroneous arrest of a person for a crime as a result of misidentification by a witness or law enforcement, confusion on the part of a witness or law enforcement as to the identity of the person who committed the crime, misinformation provided to law enforcement as to the identity of the person who committed the crime or some other mistake on the part of a witness or law enforcement as to the identity of the person who committed the crime. "Mistaken identity" shall not include any situation in which an arrestee intentionally provides false information to law enforcement officials in an attempt to conceal such person's identity.

(b) (1) When a petition for expungement is filed pursuant to subsection (a)(1), the court shall set a date for hearing on such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. 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.

(2) When a petition for expungement is filed pursuant to subsection (a)(1) or (a)(2), the official court file shall be separated from the other records of the court, and shall be disclosed only to a judge of the court and members of the staff of the court designated by a judge of the district court, the prosecuting attorney, the arresting law enforcement agency, or any other person when authorized by a court order, subject to any conditions imposed by the order.

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

(B) No surcharge or fee shall be imposed to any person filing a petition pursuant to subsection (a)(1), who was arrested as a result of being a victim of identity theft under K.S.A. 21-4018, prior to its repeal, or K.S.A. 2020 Supp. 21-6107(a), and amendments thereto, or who has had criminal charges dismissed because a court has found that there was no probable cause for the arrest, the petitioner was found not guilty in court proceedings or the charges have been dismissed.

(4) The petition filed pursuant to subsection (a)(1) or (a)(2) shall state:

(A) The petitioner's full name;

(B) the full name of the petitioner at the time of arrest, if different than the petitioner's current name;

(C) the petitioner's sex, race and date of birth;

(D) the crime for which the petitioner was arrested;

(E) the date of the petitioner's arrest; and

(F) the identity of the arresting law enforcement agency.

(c) At the hearing on a petition for expungement pursuant to subsection (a)(1), the court shall order the arrest record and subsequent court proceedings, if any, expunged upon finding:

(1) The arrest occurred because of mistaken identity;

- (2) a court has found that there was no probable cause for the arrest;
  - (3) the petitioner was found not guilty in court proceedings; or
  - (4) the expungement would be in the best interests of justice and: (A) Charges have been dismissed; or (B) no charges have been or are likely to be filed.
- (d) (1) When the court has ordered expungement of an arrest record and subsequent court proceedings, if any, on a petition for expungement pursuant to subsection (a) (1), the order shall state the information required to be stated in the petition and shall state the grounds for expungement under subsection (c). The clerk of the court shall send a certified copy of the order 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. 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. If an order of expungement is entered, the petitioner pursuant to subsection (a)(1) shall be treated as not having been arrested.
- (2) When the court has ordered expungement of arrest records on a petition for expungement pursuant to subsection (a)(2), the order shall state the information required to be stated in the petition and shall state the grounds for expungement under subsection (a)(2). The order shall also direct the Kansas bureau of investigation to purge the arrest information from the criminal justice information system central repository and all applicable state and federal databases. The clerk of the court shall send a certified copy of the order to the Kansas bureau of investigation, which shall carry out the order and shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency that may have a record of the arrest. If an order of expungement is entered, the person eligible for mandatory expungement pursuant to subsection (a)(2) shall be treated as not having been arrested.
- (e) If the ground for expungement is as provided in subsection (c)(4), the court shall determine whether, in the interests of public welfare, the records should be available for any of the following purposes:
- (1) In any application for employment as a detective with a private detective agency, as defined in 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;
  - (2) in any application for admission, or for an order of reinstatement, to the practice of law in this state;
  - (3) 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;
  - (4) to aid in determining the petitioner's qualifications for executive director of the Kansas racing 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;
  - (5) in any application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;
  - (6) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;
  - (7) 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; or
  - (8) in any other circumstances which the court deems appropriate.
- (f) The court shall make all expunged records and related information in such court's possession, created prior to, on and after July 1, 2011, available to the Kansas bureau of investigation for the purposes of:
- (1) 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
  - (2) 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.

(g) Subject to any disclosures required under subsection (e), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records have been expunged as provided in this section may state that such person has never been arrested.

(h) Whenever a person's arrest records have been expunged as provided in this section, the custodian of the records of arrest, incarceration due to arrest or court proceedings related to the arrest, shall not disclose the arrest or any information related to the arrest, except as directed by the order of expungement or when requested by the person whose arrest record was expunged.

(i) The docket fee collected at the time the petition for expungement is filed pursuant to subsection (a)(1) shall be disbursed in accordance with K.S.A. 20-362, and amendments thereto.

**History:** L. 1998, ch. 131, § 3; L. 2001, ch. 69, § 2; L. 2006, ch. 149, § 8; L. 2006, ch. 195, § 12; L. 2009, ch. 116, § 12; L. 2010, ch. 62, § 4; L. 2011, ch. 87, § 4; L. 2012, ch. 66, § 4; L. 2013, ch. 125, § 4; L. 2014, ch. 82, § 24; L. 2014, ch. 115, § 26; L. 2015, ch. 81, § 10; L. 2016, ch. 93, § 14; L. 2017, ch. 62, § 8; L. 2017, ch. 100, § 9; L. 2019, ch. 58, § 7; July 1.

Section was amended twice in the 2011 session, see also 22-2410a.

L. 2014, ch. 82, was held to be an invalid enactment, see *Solomon v. State*, 303 K. 512, 364 P.3d 536 (2015).

Section was also amended by L. 2017, ch. 80, § 6, but that version was repealed by L. 2017, ch. 100, § 13.