

SENATE BILL No. 241

By Committee on Judiciary

2-10

1 AN ACT concerning children and minors; relating to juvenile offenders;
2 requiring certain records to be automatically expunged from a
3 juvenile's record; amending K.S.A. 38-2312 and repealing the existing
4 section.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 38-2312 is hereby amended to read as follows: 38-
8 2312. (a) Except as provided in subsections (b) and (c);:

9 *(1) On and after July 1, 2023, upon final discharge for an*
10 *adjudication concerning an act committed by a juvenile which, if*
11 *committed by an adult, would constitute a nonperson misdemeanor, the*
12 *court shall order the expungement of all records or files related to such*
13 *adjudication. An order expunging records pursuant to this paragraph shall*
14 *not require any action by the juvenile. No docket fee shall be charged.*

15 *(2) Any records or files specified in this code concerning a juvenile*
16 *that have not been expunged pursuant to paragraph (1) may be expunged*
17 *upon application to a judge of the court of the county-in which where the*
18 *records or files are maintained. The application for expungement may be*
19 *made by the juvenile, if 18 years of age or older, or; if the juvenile is less*
20 *than 18 years 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, prior to its repeal, or K.S.A. 2022 Supp. 21-*
24 *5402, and amendments thereto, murder in the first degree; K.S.A. 21-3402,*
25 *prior to its repeal, or K.S.A. 2022 Supp. 21-5403, and amendments*
26 *thereto, murder in the second degree; K.S.A. 21-3403, prior to its repeal,*
27 *or K.S.A. 2022 Supp. 21-5404, and amendments thereto, voluntary*
28 *manslaughter; K.S.A. 21-3404, prior to its repeal, or K.S.A. 2022 Supp.*
29 *21-5405, and amendments thereto, involuntary manslaughter; K.S.A. 21-*
30 *3439, prior to its repeal, or K.S.A. 2022 Supp. 21-5401, and amendments*
31 *thereto, capital murder; K.S.A. 21-3442, prior to its repeal, or K.S.A. 2022*
32 *Supp. 21-5405(a)(3) or (a)(5), and amendments thereto, involuntary*
33 *manslaughter while driving under the influence of alcohol or drugs; K.S.A.*
34 *21-3502, prior to its repeal, or K.S.A. 2022 Supp. 21-5503, and*
35 *amendments thereto, rape; K.S.A. 21-3503, prior to its repeal, or K.S.A.*
36 *2022 Supp. 21-5506(a), and amendments thereto, indecent liberties with a*

1 child; K.S.A. 21-3504, prior to its repeal, or K.S.A. 2022 Supp. 21-
 2 5506(b), and amendments thereto, aggravated indecent liberties with a
 3 child; K.S.A. 21-3506, prior to its repeal, or K.S.A. 2022 Supp. 21-
 4 5504(b), and amendments thereto, aggravated criminal sodomy; K.S.A.
 5 21-3510, prior to its repeal, or K.S.A. 2022 Supp. 21-5508(a), and
 6 amendments thereto, indecent solicitation of a child; K.S.A. 21-3511, prior
 7 to its repeal, or K.S.A. 2022 Supp. 21-5508(b), and amendments thereto,
 8 aggravated indecent solicitation of a child; K.S.A. 21-3516, prior to its
 9 repeal, or K.S.A. 2022 Supp. 21-5510, and amendments thereto, sexual
 10 exploitation of a child; K.S.A. 2022 Supp. 21-5514(a), and amendments
 11 thereto, internet trading in child pornography; K.S.A. 2022 Supp. 21-
 12 5514(b), and amendments thereto, aggravated internet trading in child
 13 pornography; K.S.A. 21-3603, prior to its repeal, or K.S.A. 2022 Supp. 21-
 14 5604(b), and amendments thereto, aggravated incest; K.S.A. 21-3608,
 15 prior to its repeal, or K.S.A. 2022 Supp. 21-5601(a), and amendments
 16 thereto, endangering a child; K.S.A. 21-3609, prior to its repeal, or K.S.A.
 17 2022 Supp. 21-5602, and amendments thereto, abuse of a child; or which
 18 would constitute an attempt to commit a violation of any of the offenses
 19 specified in this subsection.

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

26 (d) (1) When a petition for expungement is filed *pursuant to*
 27 *subsection (a)(2)*, the court shall set a date for a hearing on the petition and
 28 shall give notice thereof to the county or district attorney. The petition
 29 shall state:

30 ~~(1)(A)~~ The juvenile's full name;
 31 ~~(2)(B)~~ the full name of the juvenile as reflected in the court record, if
 32 different than ~~(1) subparagraph (A)~~;
 33 ~~(3)(C)~~ the juvenile's sex and date of birth;
 34 ~~(4)(D)~~ the offense for which the juvenile was adjudicated;
 35 ~~(5)(E)~~ the date of the trial; and
 36 ~~(6)(F)~~ the identity of the trial court.

37 (2) Except as otherwise provided by law, a petition for expungement
 38 shall be accompanied by a docket fee in the amount of \$176. On and after
 39 July 1, 2019, through June 30, 2025, the supreme court may impose a
 40 charge, not to exceed \$19 per case, to fund the costs of non-judicial
 41 personnel. All petitions for expungement shall be docketed in the original
 42 action. Any person who may have relevant information about the petitioner
 43 may testify at the hearing. The court may inquire into the background of

1 the petitioner.

2 (e) (1) After *the hearing on a petition for expungement pursuant to*
3 *subsection (a)(2)*, the court shall order the expungement of the records and
4 files if the court finds that:

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

7 (ii) one year has elapsed since the final discharge for an adjudication
8 concerning acts committed by a juvenile which, if committed by an adult,
9 would constitute a violation of K.S.A. 2022 Supp. 21-6419, and
10 amendments thereto; or

11 (iii) the juvenile is a victim of human trafficking, aggravated human
12 trafficking or commercial sexual exploitation of a child, the adjudication
13 concerned acts committed by the juvenile as a result of such victimization,
14 including, but not limited to, acts which, if committed by an adult, would
15 constitute a violation of K.S.A. 2022 Supp. 21-6203 or 21-6419, and
16 amendments thereto, and the hearing on expungement occurred on or after
17 the date of final discharge. The provisions of this clause shall not allow an
18 expungement of records or files concerning acts described in subsection
19 (b);

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

25 (C) the circumstances and behavior of the petitioner warrant
26 expungement.

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

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

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

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

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

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

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

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

16 (1) The person whose record was expunged;

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

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

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

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

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

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

42 (8) the Kansas sentencing commission; or

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

1 (A) Completing a person's criminal history record information within
2 the central repository in accordance with K.S.A. 22-4701 et seq., and
3 amendments thereto; or

4 (B) providing information or documentation to the federal bureau of
5 investigation, in connection with the national instant criminal background
6 check system, to determine a person's qualification to possess a firearm.

7 (l) The provisions of subsection (k)(9) shall apply to all records
8 created prior to, on and after July 1, 2011.

9 Sec. 2. K.S.A. 38-2312 is hereby repealed.

10 Sec. 3. This act shall take effect and be in force from and after its
11 publication in the statute book.