

SENATE BILL No. 136

By Committee on Judiciary

2-1

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to expungement; arrest records; amending K.S.A. 2016 Supp. 22-2410
3 and repealing the existing section.
4

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

6 Section 1. K.S.A. 2016 Supp. 22-2410 is hereby amended to read as
7 follows: 22-2410. (a) (1) Any person who has been arrested in this state
8 may petition the district court for the expungement of such arrest record.

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

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

28 (b) (1) When a petition for expungement is filed *pursuant to*
29 *subsection (a)(1), the court shall set a date for hearing on such petition and*
30 *shall cause notice of such hearing to be given to the prosecuting attorney*
31 *and the arresting law enforcement agency. Any person who may have*
32 *relevant information about the petitioner may testify at the hearing. The*
33 *court may inquire into the background of the petitioner.*

34 (2) When a petition for expungement is filed *pursuant to subsection*
35 *(a)(1) or (a) (2), the official court file shall be separated from the other*
36 *records of the court, and shall be disclosed only to a judge of the court and*

1 members of the staff of the court designated by a judge of the district
2 court, the prosecuting attorney, the arresting law enforcement agency, or
3 any other person when authorized by a court order, subject to any
4 conditions imposed by the order.

5 (3) (A) Except as otherwise provided by law, a petition for
6 expungement *pursuant to subsection (a)(1)* shall be accompanied by a
7 docket fee in the amount of \$176. Except as provided further, the docket
8 fee established in this section shall be the only fee collected or moneys in
9 the nature of a fee collected for the docket fee. Such fee shall only be
10 established by an act of the legislature and no other authority is established
11 by law or otherwise to collect a fee. On and after July 1, 2015, through
12 June 30, 2017, the supreme court may impose an additional charge, not to
13 exceed \$19 per docket fee, to fund the costs of non-judicial personnel. ~~The~~
14 ~~petition shall state:~~

- 15 (1) ~~The petitioner's full name;~~
16 (2) ~~the full name of the petitioner at the time of arrest, if different~~
17 ~~than the petitioner's current name;~~
18 (3) ~~the petitioner's sex, race and date of birth;~~
19 (4) ~~the crime for which the petitioner was arrested;~~
20 (5) ~~the date of the petitioner's arrest; and~~
21 (6) ~~the identity of the arresting law enforcement agency.~~

22 (B) No surcharge or fee shall be imposed to any person filing a
23 petition pursuant to ~~this section~~ *subsection (a)(1)*, who was arrested as a
24 result of being a victim of identity theft under K.S.A. 21-4018, prior to its
25 repeal, or K.S.A. 2016 Supp. 21-6107(a), and amendments thereto, or who
26 has had criminal charges dismissed because a court has found that there
27 was no probable cause for the arrest, the petitioner was found not guilty in
28 court proceedings or the charges have been dismissed. ~~Any person who~~
29 ~~may have relevant information about the petitioner may testify at the~~
30 ~~hearing. The court may inquire into the background of the petitioner.~~

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

- 33 (A) *The petitioner's full name;*
34 (B) *the full name of the petitioner at the time of arrest, if different*
35 *than the petitioner's current name;*
36 (C) *the petitioner's sex, race and date of birth;*
37 (D) *the crime for which the petitioner was arrested;*
38 (E) *the date of the petitioner's arrest; and*
39 (F) *the identity of the arresting law enforcement agency.*

40 (c) At the hearing on a petition for expungement *pursuant to*
41 *subsection (a)(1)*, the court shall order the arrest record and subsequent
42 court proceedings, if any, expunged upon finding: (1) The arrest occurred
43 because of mistaken identity;

- 1 (2) a court has found that there was no probable cause for the arrest;
2 (3) the petitioner was found not guilty in court proceedings; or
3 (4) the expungement would be in the best interests of justice and: (A)
4 Charges have been dismissed; or (B) no charges have been or are likely to
5 be filed.

6 (d) **(1)** When the court has ordered expungement of an arrest record
7 and subsequent court proceedings, if any, ***on a petition for expungement***
8 ***pursuant to subsection (a)(1)***, the order shall state the information
9 required to be stated in the petition and shall state the grounds for
10 expungement under subsection ~~(a)(2)~~ or (c). The clerk of the court shall
11 send a certified copy of the order to the Kansas bureau of investigation
12 which shall notify the federal bureau of investigation, the secretary of
13 corrections and any other criminal justice agency which may have a record
14 of the arrest. If the case was appealed from municipal court, the clerk of
15 the district court shall send a certified copy of the order of expungement to
16 the municipal court. The municipal court shall order the case expunged
17 once the certified copy of the order of expungement is received. If an order
18 of expungement is entered, the petitioner *pursuant to subsection (a)(1)* ~~or~~
19 ~~the person eligible for mandatory expungement pursuant to subsection (a)~~
20 ~~(2)~~ shall be treated as not having been arrested.

21 **(2)** ***When the court has ordered expungement of arrest records on a***
22 ***petition for expungement pursuant to subsection (a)(2), the order shall***
23 ***state the information required to be stated in the petition and shall state***
24 ***the grounds for expungement under subsection (a)(2). The order shall***
25 ***also direct the Kansas bureau of investigation to purge the arrest***
26 ***information from the criminal justice information system central***
27 ***repository and all applicable state and federal databases. The clerk of***
28 ***the court shall send a certified copy of the order to the Kansas bureau of***
29 ***investigation, which shall carry out the order and shall notify the federal***
30 ***bureau of investigation, the secretary of corrections and any other***
31 ***criminal justice agency that may have a record of the arrest. If an order***
32 ***of expungement is entered, the person eligible for mandatory***
33 ***expungement pursuant to subsection (a)(2) shall be treated as not***
34 ***having been arrested.***

35 (e) If the ground for expungement is as provided in subsection (c)(4),
36 the court shall determine whether, in the interests of public welfare, the
37 records should be available for any of the following purposes:

38 (1) In any application for employment as a detective with a private
39 detective agency, as defined in K.S.A. 75-7b01, and amendments thereto;
40 as security personnel with a private patrol operator, as defined by K.S.A.
41 75-7b01, and amendments thereto; or with an institution, as defined in
42 K.S.A. 76-12a01, and amendments thereto, of the Kansas department for
43 aging and disability services;

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

3 (3) to aid in determining the petitioner's qualifications for
4 employment with the Kansas lottery or for work in sensitive areas within
5 the Kansas lottery as deemed appropriate by the executive director of the
6 Kansas lottery;

7 (4) to aid in determining the petitioner's qualifications for executive
8 director of the Kansas racing commission, for employment with the
9 commission or for work in sensitive areas in parimutuel racing as deemed
10 appropriate by the executive director of the commission, or to aid in
11 determining qualifications for licensure or renewal of licensure by the
12 commission;

13 (5) in any application for a commercial driver's license under K.S.A.
14 8-2,125 through 8-2,142, and amendments thereto;

15 (6) to aid in determining the petitioner's qualifications to be an
16 employee of the state gaming agency;

17 (7) to aid in determining the petitioner's qualifications to be an
18 employee of a tribal gaming commission or to hold a license issued
19 pursuant to a tribal-state gaming compact; or

20 (8) in any other circumstances which the court deems appropriate.

21 (f) The court shall make all expunged records and related information
22 in such court's possession, created prior to, on and after July 1, 2011,
23 available to the Kansas bureau of investigation for the purposes of:

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

27 (2) providing information or documentation to the federal bureau of
28 investigation, in connection with the national instant criminal background
29 check system, to determine a person's qualification to possess a firearm.

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

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

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

1 Sec. 2. K.S.A. 2016 Supp. 22-2410 is hereby repealed.

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