

(Published in the Topeka Metro News March 10, 2014)

ORDINANCE NO. 19892

AN ORDINANCE introduced by City Manager Jim Colson, concerning municipal court procedures for expungement and finger printing, amending City of Topeka Code § 2.110.660, § 2.110.670 and § 2.110.680 and specifically repealing said original sections.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That section 2.110.660, Expungement of certain convictions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Expungement of certain convictions.

(a) Expungement.

(1) Except as provided in subsections (b), (c), (d), and (e) of this section, any person who has been convicted of a violation of a city ordinance of this state of the city of Topeka may petition the convicting municipal court for the expungement of such conviction and related arrest records if three or more years have elapsed since the person:

(1)(A) Satisfied the sentence imposed; or

(2)(B) Was discharged from probation, parole or a suspended sentence.

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

29 (b) Any person convicted of the violation of an ordinance which would also
30 constitute a violation of K.S.A. 21-3512, prior to its repeal, or a violation of K.S.A. 21-
31 6419, and amendments thereto, or who entered into a diversion agreement in lieu of
32 further criminal proceedings for such violation, may petition the municipal court for the
33 expungement of such 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 from
36 probation, parole, conditional release or a suspended sentence; and

37 (2) Such person can prove they were acting under coercion caused by
38 the act of another. For purposes of this section, 'coercion' means: threats of
39 harm or physical restraint against any person; a scheme, plan or pattern intended
40 to cause a person to believe that failure to perform an act would result in bodily
41 harm or physical restraint against any person; or the abuse or threatened abuse
42 of the legal process.

43 (c) No person may petition for expungement until five or more years have
44 elapsed since the person satisfied the sentence imposed or the terms of a diversion
45 agreement or was discharged from probation, parole, conditional release or a
46 suspended sentence, if such person was convicted of the violation of a city ordinance
47 which would also constitute:

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

50 ~~(2) — A violation of K.S.A. 8-1567, and amendments thereto;~~

51 (32) Driving while the privilege to operate a motor vehicle on the
52 public highways of this state has been canceled, suspended or revoked,
53 as prohibited by K.S.A. 8-262, and amendments thereto;

54 (43) Perjury resulting from a violation of K.S.A. 8-261a, and
55 amendments thereto;

56 (54) A violation of the provisions of the fifth clause of K.S.A. 8-
57 142, and amendments thereto, relating to fraudulent applications;

58 (65) Any crime punishable as a felony wherein a motor vehicle
59 was used in the perpetration of such crime;

60 (76) Failing to stop at the scene of an accident and perform the
61 duties required by K.S.A. 8-1602, 8-1603, prior to its repeal, or 8-1604,
62 and amendments thereto;

63 (87) A violation of the provisions of K.S.A. 40-3104, and
64 amendments thereto, relating to motor vehicle liability insurance coverage;
65 or

66 (98) A violation of K.S.A. 21-3405b, ~~and amendments~~
67 ~~thereto~~prior to its repeal.

68 (d) No person may petition for expungement until 10 or more years have
69 elapsed since the person satisfied the sentence imposed or the terms of a diversion
70 agreement or was discharged from probation, parole, conditional release or a
71 suspended sentence, if such person was convicted of the violation of an ordinance
72 which would also constitute a violation of K.S.A. 8-1567, and amendments thereto.

73 (e) There shall be no expungement of convictions or diversion for a violation
74 of an ordinance which would also constitute a violation of K.S.A. 8-2,144 and
75 amendments thereto.

76 (e~~f~~) When a petition for expungement is filed, the court shall set a date for a
77 hearing thereon and shall give notice thereof to the prosecuting attorney. The petition
78 shall state: (1) the defendant's full name; (2) the full name of the defendant at the time
79 of arrest, ~~and conviction~~ or diversion, if different than the defendant's current name; (3)
80 the defendant's sex, race, and date of birth; (4) the crime for which the defendant was
81 arrested, convicted, or diverted; (5) the date of the defendant's arrest, conviction, or
82 diversion; and (6) the identity of the convicting court, arresting law enforcement agency
83 or diverting authority. ~~A~~The municipal court may prescribe a fee to be charged as costs
84 for a person petitioning for an order of expungement pursuant to this section. Any
85 person who may have relevant information about the petitioner may testify at the
86 hearing. The court may inquire into the background of the petitioner and shall have
87 access to any reports or records relating to the petitioner that are on file with the
88 secretary of corrections or the ~~Kansas Parole Board~~ prisoner review board.

89 (e~~g~~) At the hearing on the petition, the court shall order the petitioner's arrest
90 record, conviction, or diversion expunged if the court finds that:

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

94 (2) The circumstances and behavior of the petitioner warrant the
95 expungement; and

96 (3) The expungement is consistent with the public welfare.

97 (eh) When the court has ordered an arrest record, conviction, or diversion
98 expunged, the order of expungement shall state the information required to be
99 contained in the petition. The clerk of the court shall send a certified copy of the order of
100 expungement to the Kansas Bureau of Investigation which shall notify the Federal
101 Bureau of Investigation, the secretary of corrections and any other criminal justice
102 agency which may have a record of the arrest, conviction, or diversion. After the order
103 of expungement is entered, the petitioner shall be treated as not having been arrested,
104 convicted, or diverted of the crime, except that:

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

108 (2) The petitioner shall disclose that the arrest, conviction, or
109 diversion occurred if asked about previous arrests, convictions, or
110 diversions: (i) in any application for employment as a detective with a
111 private detective agency, as defined by K.S.A. 75-7b01, and amendments
112 thereto; as security personnel with a private patrol operator, as defined by
113 K.S.A. 75-7b01, and amendments thereto; ~~with a criminal justice agency,~~
114 ~~as defined by K.S.A. 22-4701, and amendments thereto;~~ or with an
115 institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the
116 department of ~~social and rehabilitation services~~ for children and families;
117 (ii) in any application for admission, or for an order of reinstatement, to the
118 practice of law in this state; (iii) to aid in determining the petitioner's

119 qualifications for employment with the Kansas Lottery or for work in
120 sensitive areas within the Kansas Lottery as deemed appropriate by the
121 executive director of the Kansas Lottery; (iv) to aid in determining the
122 petitioner's qualifications for Executive Director of the Kansas Racing and
123 Gaming Commission, for employment with the Commission or for work in
124 sensitive areas in parimutuel racing as deemed appropriate by the
125 Executive Director of the Commission, or to aid in determining
126 qualifications for licensure or renewal of licensure by the Commission ; (v)
127 to aid in determining the petitioner's qualifications for the following under
128 the Kansas Expanded Lottery Act: (1) Lottery gaming facility manager or
129 prospective manager, racetrack gaming facility manager or prospective
130 manager, licensee or certificate holder; or (2) an officer, director,
131 employee, owner, agent or contractor thereof; (v) upon application for a
132 commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and
133 amendments thereto; (vi) to aid in determining the petitioner's
134 qualifications to be an employee of the state Gaming Agency; (vii) to aid in
135 determining the petitioner's qualifications to be an employee of a tribal
136 gaming commission or to hold a license issued pursuant to a tribal-state
137 gaming compact; ~~or~~ (viii) in any application for registration as a broker-
138 dealer, agent, investment advisor or investment adviser representative, all
139 as defined in K.S.A. ~~17-1252~~ 17-12a102 and amendments thereto; (ix) in
140 any application for employment as a law enforcement officer, as defined in
141 K.S.A. 22-2202 or 74-5602, and amendments thereto; or (x) for

142 applications to aid in determining the petitioner's qualifications for a
143 license to carry a concealed weapon pursuant to the personal and family
144 protection act, K.S.A. 75-7c01 et seq. and amendments thereto.

145 (3) The court, in the order of expungement, may specify other
146 circumstances under which the arrest, conviction or diversion is to be
147 disclosed; and

148 (4) The conviction may be disclosed in a subsequent
149 prosecution for an offense which requires as an element of such offense a
150 prior conviction of the type expunged.

151 (fi) Whenever a person is convicted of an ordinance violation, pleads guilty
152 and pays a fine for such a violation, is placed on parole or probation or is granted a
153 suspended sentence for such a violation, the person shall be informed of the ability to
154 expunge the arrest records or conviction. Whenever a person enters into a diversion
155 agreement, the person shall be informed of the ability to expunge the diversion.

156 (gj) Subject to the disclosures required pursuant to subsection ~~(e)~~ (h) of this
157 section, in any application for employment, license or other civil right or privilege, or any
158 appearance as a witness, a person whose arrest records, conviction, or diversion of an
159 offense has been expunged ~~under this statute~~ may state that such person has never
160 been arrest, convicted, or diverted of such offense.

161 (~~hk~~) Whenever the record of any arrest, conviction, or diversion has been
162 expunged ~~under the provisions of this section or under the provisions of any other~~
163 ~~existing or former statute~~, the custodian of the records of arrest, conviction, diversion

and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

(1) The person whose record was expunged;

(2) A ~~criminal justice agency,~~ private detective agency or a ~~merchant guard or merchant patrol operator,~~private patrol operator, as defined by K.S.A. 75-7b01, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

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

(4) The secretary of ~~social and rehabilitation services~~the department for children and families, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the ~~department of social and rehabilitation services~~for children and families of any person whose record has been expunged;

(5) A person entitled to such information pursuant to the terms of the expungement order;

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

187 (7) The supreme court, the clerk or disciplinary administrator
188 thereof, the state board for admission of attorneys or the state board for
189 discipline of attorneys, and the request is accompanied by a statement
190 that the request is being made in conjunction with an application for
191 admission, or for an order of reinstatement, to the practice of law in this
192 state by the person whose record has been expunged;

193 (8) The Kansas Lottery, and the request is accompanied by a
194 statement that the request is being made to aid in determining
195 qualifications for employment with the Kansas Lottery or for work in
196 sensitive areas within the Kansas Lottery as deemed appropriate by the
197 executive director of the Kansas Lottery;

198 (9) The governor or the Kansas Racing and Gaming
199 Commission, or a designee of the Commission, and the request is
200 accompanied by a statement that the request is being made to aid in
201 determining qualifications for Executive Director of the Commission, for
202 employment with the Commission, for work in sensitive areas in
203 parimutuel racing as deemed appropriate by the Executive Director of the
204 Commission or for licensure, renewal of licensure or continued licensure
205 by the Commission;

206 (10) The Kansas Racing and Gaming Commission, or a designee
207 of the Commission, and the request is accompanied by a statement that
208 the request is being made to aid in determining qualifications of the
209 following under the Kansas Expanded Lottery Act: (i) lottery gaming facility

managers and prospective managers, racetrack gaming facility managers and prospective managers, licensees and certificate holders; and (ii) their officers, directors, employees, owners, agents and contractors;

~~(4011)~~ The state Gaming Agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications: (i) to be an employee of the state Gaming Agency; or (ii) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact; ~~or~~

~~(4112)~~ The Kansas Securities Commissioner, or a designee of the Commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged; ~~;~~

(13) The Attorney General, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act;

(14) The Kansas Sentencing Commission;

(15) The Kansas Commission on Peace Officers' Standards and Training and the request is accompanied by a statement that the request is being made to aid in determining certification eligibility for employment as a law enforcement officer; or

(16) A law enforcement agency and the request is accompanied by a statement that the request is being made to aid in determining eligibility for employment as a law enforcement officer.

Section 2. That section 2.110.670, Expungement of arrest records, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Expungement of arrest records; no conviction.

(a) Any person who has been arrested on a violation of ~~a city~~an ordinance of ~~this state~~the city of Topeka may petition the municipal court for the expungement of such arrest record.

(b) When a petition for expungement is filed, 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. When a petition for expungement is filed, 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 court staff, the prosecuting attorney, the arresting law enforcement agency, or any other person when authorized by court order, subject to any conditions imposed by the order.

The petition shall state:

- (1) The petitioner's full name;
- (2) The full name of the petitioner at the time of arrest, if different than the petitioner's current name;
- (3) The petitioner's sex, race and date of birth;
- (4) The crime for which the petitioner was arrested;
- (5) The date of the petitioner's arrest; and

(6) The identity of the arresting law enforcement agency.

~~A~~The municipal court may prescribe a fee to be charged as costs for a person petitioning for an order of expungement pursuant to this section, except that no fee shall be charged to a person 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. 21-6107, and amendments thereto. 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.

(c) At the hearing on a petition for expungement, 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 (i) charges have been dismissed; or (ii) no charges have been or are likely to be filed.

(d) When the court has ordered expungement of an arrest record and subsequent court proceedings, if any, the order shall state the information required to be stated in the petition and shall state the grounds for expungement under subsection (c) of this section. The clerk of the court shall send a certified copy of the order to ~~the Federal Bureau of Investigation,~~ the Kansas Bureau of Investigation, which shall notify the Federal Bureau of Investigation, the secretary of corrections and any other criminal

278 justice agency which may have a record of the arrest. If an order of expungement is
279 entered, the petitioner shall be treated as not having been arrested.

280 (e) If the ground for expungement is as provided in subsection (c)(4) of this
281 section, the court shall determine whether, in the interest of public welfare, the records
282 should be available for any of the following purposes:

283 (1) In any application for employment as a detective with a private
284 detective agency, as defined by K.S.A. 75-7b01 and amendments thereto; as
285 security personnel with a ~~merchant guard or merchant~~private patrol operator, as
286 defined by K.S.A. 75-7b01 and amendments thereto; or with an institution, as
287 defined in K.S.A. 76-12a01 and amendments thereto, of the Department of
288 ~~Social and Rehabilitation Services~~for Children and Families;

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

291 (3) To aid in determining the petitioner's qualifications for employment
292 with the Kansas Lottery or for work in sensitive areas within the Kansas Lottery
293 as deemed appropriate by the executive director of the Kansas Lottery;

294 (4) To aid in determining the petitioner's qualifications for Executive
295 Director of the Kansas Racing and Gaming Commission, for employment with the
296 Commission or for work in sensitive areas in parimutuel racing as deemed
297 appropriate by the Executive Director of the Commission, or to aid in determining
298 qualifications for licensure or renewal of licensure by the Commission;

299 (5) In any application for a commercial driver's license under K.S.A. 8-
300 2,125 through 8-2,142 and amendments thereto;

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

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

306 (8) In any other circumstances which the court deems appropriate.

307 (f) The court shall make all expunged records and related information in the
308 court's possession, created prior to, on and after July 1, 2011, available to the Kansas
309 Bureau of Investigation for the purpose of:

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

313 (2) Providing information or documentation to the Federal Bureau of
314 Investigation, in connection with the national instant criminal background check
315 system, to determine a person's qualification to possess a firearm.

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

320 (gh) Whenever a petitioner's arrest records have been expunged as provided
321 in this section, the custodian of the records of arrest, incarceration due to arrest or court
322 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.

Section 3. That section 2.110.680, Conviction of ordinances comparable to class A or B misdemeanor or assault – Fingerprinting – Costs, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Conviction of ordinances comparable to class A or B misdemeanor or assault – Fingerprinting – Costs.

(a) The municipal court judge shall ensure that all persons convicted of violating municipal ordinance provisions that prohibit conduct comparable to a class A or B misdemeanor or assault as defined in subsection (a) of K.S.A. 21-34085412 and amendments thereto under a Kansas criminal statute are fingerprinted and processed.

(b) The municipal court judge shall ensure that all persons arrested or charged with a violation of an ordinance prohibiting the acts prohibited by K.S.A. 8-2,144, 8-1567, or 8-1025, and amendments thereto, are fingerprinted and processed at the time of booking or first appearance, whichever occurs first.

(b~~c~~) The municipal court judge shall order the individual to be fingerprinted at an appropriate location as determined by the municipal court judge. Failure of the person to be fingerprinted after court order issued by the municipal judge shall constitute contempt of court. To reimburse the city or other entity for costs associated with fingerprinting, the municipal court judge may assess reasonable court costs, in addition to other court costs imposed by the state or municipality.

Section 4. That original § 2.110.660, § 2.110.670 and § 2.110.680 of The Code of the City of Topeka, Kansas, are hereby specifically repealed.

Section 5. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

Section 6. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 7. Should any section, clause or phrase of this ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

PASSED AND APPROVED by the City Council on March 4, 2014.

CITY OF TOPEKA, KANSAS

ATTEST:

Larry E. Wolgast, Mayor

Brenda Younger, City Clerk