

(Published in the Topeka Metro News October 10, 2016)

ORDINANCE NO. 20027

AN ORDINANCE introduced by City Manager Jim Colson, concerning expungement of certain convictions in municipal court, amending City of Topeka Code Section 2.110.660 and repealing original section.

BE IT ORDAINED BY THE GOVERNING BODY 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.~~ General Rule; Three Years.

~~(1)~~ Except as provided in subsections (b), (c), (d), (e), (f) and (g) of this section, any person who has been convicted of a violation of an ordinance of the city of Topeka or has satisfied the terms of a diversion agreement may petition the municipal court for the expungement of such conviction, diversion and related arrest records if the following conditions are met:

(1) All assessed costs, fees and fines have been paid in full, and

(2) Three or more years have elapsed since the person later of any of the following events:

(i) Completion of diversion;

(ii) Satisfied the Pronouncement of sentence imposed; or

(iii) Was discharged from probation, parole or a suspended sentence incarceration.

~~(2) Except as provided in subsections (b), (c), (d), (e), (f) and (g) of this section, any person who has fulfilled the terms of a diversion agreement based~~

28 ~~on a violation of an ordinance may petition the court for the expungement of such~~
29 ~~diversion agreement and related arrest records if three or more years have~~
30 ~~elapsed since the terms of the diversion agreement were fulfilled.~~

31 (b) Exception; Knives; No Waiting Period. Any person convicted of a violation
32 of any ordinance that is prohibited by K.S.A. 12-16,134(a) or (b) and amendments
33 thereto, and which was adopted prior to July 1, 2014, or who entered into a diversion
34 agreement in lieu of further criminal proceedings for such violation, may petition the
35 court for the expungement of such conviction or diversion agreement and related arrest
36 records.

37 (c) Exception; Selling Sexual Relations; One Year Waiting Period. Any person
38 convicted of the violation of an ordinance which would also constitute a violation of
39 K.S.A. 21-3512, prior to its repeal, or a violation of K.S.A. 21-6419, and amendments
40 thereto, or who entered into a diversion agreement in lieu of further criminal
41 proceedings for such violation, may petition the municipal court for the expungement of
42 such conviction or diversion agreement and related arrest records if the following
43 conditions are met:

44 (1) All assessed costs, fees and fines have been paid in full; and

45 (2) One or more years have elapsed since the person satisfied the
46 sentence imposed or the terms of a diversion agreement or was discharged from
47 probation, parole, conditional release or a suspended sentence; and later of any
48 of the following events:

49 (i) Completion of diversion;

50 (ii) Pronouncement of sentence; or

51 (iii) Discharge from probation, parole or incarceration; and

52 (23) Such person can prove they were acting under coercion caused by
53 the act of another. For purposes of this section, “coercion” means: threats of
54 harm or physical restraint against any person; a scheme, plan or pattern intended
55 to cause a person to believe that failure to perform an act would result in bodily
56 harm or physical restraint against any person; or the abuse or threatened abuse
57 of the legal process.

58 (d) Exception; Motor Vehicle Related; Five Years. No person may petition for
59 expungement of a conviction or a diversion agreement and related arrest records for
60 any of the ordinance violations that would also constitute the crimes identified in
61 subsection (d)(3) until the conditions in subsection (d)(1) and (d)(2) have been met:

62 (1) All assessed costs, fees and fines have been paid in full; and

63 (2) ~~Five or more years have elapsed since the person satisfied the~~
64 ~~sentence imposed or the terms of a diversion agreement or was discharged from~~
65 ~~probation, parole, conditional release or a suspended sentence, if such person~~
66 ~~was convicted of the violation of a city ordinance which would also constitute~~ later
67 of any of the following events:

68 (i) Completion of diversion;

69 (ii) Pronouncement of sentence; or

70 (iii) Discharge from probation, parole or incarceration.

71 (3) Crimes.

72 (4i) Vehicular homicide, as defined by K.S.A. 21-3405, prior to its
73 repeal, or K.S.A. 21-5406, and amendments thereto;

74 (2ii) Driving while the privilege to operate a motor vehicle on the
75 public highways of this state has been canceled, suspended or revoked,
76 as prohibited by K.S.A. 8-262, and amendments thereto;

77 (3iii) Perjury resulting from a violation of K.S.A. 8-261a, and
78 amendments thereto;

79 (4iv) A violation of the provisions of the fifth clause of K.S.A. 8-
80 142, and amendments thereto, relating to fraudulent applications;

81 (5v) Any crime punishable as a felony wherein a motor vehicle
82 was used in the perpetration of such crime;

83 (6vi) Failing to stop at the scene of an accident and perform the
84 duties required by K.S.A. 8-1602, 8-1603, prior to its repeal, or 8-1604,
85 and amendments thereto;

86 (7vii) A violation of the provisions of K.S.A. 40-3104, and
87 amendments thereto, relating to motor vehicle liability insurance coverage;
88 or

89 (8viii) A violation of K.S.A. 21-3405b, prior to its repeal.

90 (e) Exception; Driving Under the Influence, First Violation; Five Years. No
91 person may petition for expungement of a conviction or a diversion agreement and
92 related arrest records for a first violation of an ordinance which would also constitute a
93 first violation of K.S.A. 8-1567 or 8-1025 and amendments thereto until the following
94 conditions have been met:

95 (1) All assessed costs, fees and fines have been paid in full; and

(2) ~~Five or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, parole, conditional release or a suspended sentence, if such person was convicted of a first violation of an ordinance which would also constitute a first violation of K.S.A. 8-1567 or 8-1025, and amendments thereto~~ later of any of the following events:

(i) Completion of diversion;

(ii) Pronouncement of sentence; or

(iii) Discharge from probation, parole or incarceration.

(f) Exception; Driving Under the Influence, Second and Subsequent Violations; Ten Years. ~~No person may petition for expungement until 10 or more years have elapsed since the person satisfied the sentence imposed or was discharged from probation, parole, conditional release or a suspended sentence, if such person was convicted of a second or subsequent violation of an ordinance which would also constitute a second or subsequent violation of K.S.A. 8-1567 or 8-1025, and amendments thereto~~ of a conviction or diversion agreement and related arrest records for a second or subsequent violation of an ordinance which would also constitute a second or subsequent violation of K.S.A. 8-1567 or 8-1025 and amendments thereto until the following conditions are met:

(1) All assessed costs, fees and fines have been paid in full; and

(2) Ten (10) or more years have elapsed since the later of any of the following events:

(i) Completion of diversion;

119 (ii) Pronouncement of sentence; or

120 (iii) Discharge from probation, parole or incarceration.

121 (g) Exception; Driving Under the Influence; Commercial Vehicles. There shall
122 be no expungement of convictions or diversion for a violation of an ordinance which
123 would also constitute a violation of K.S.A. 8-2144 and amendments thereto.

124 (h) Petition. When a petition for expungement is filed, the court shall set a
125 date for a hearing thereon and shall give notice thereof to the prosecuting attorney. The
126 petition shall state: (1) the defendant's full name; (2) the full name of the defendant at
127 the time of arrest, conviction or diversion, if different than the defendant's current name;
128 (3) the defendant's sex, race, and date of birth; (4) the crime for which the defendant
129 was arrested, convicted, or diverted; (5) the date of the defendant's arrest, conviction, or
130 diversion; and (6) an acknowledgement that all assessed costs, fees and fines
131 associated with the conviction or diversion agreement sought to be expunged have
132 been paid; and (7) the identity of the convicting court, arresting law enforcement agency
133 or diverting authority. The municipal court may prescribe a fee to be charged as costs
134 for a person petitioning for an order of expungement pursuant to this section. Any
135 person who may have relevant information about the petitioner may testify at the
136 hearing. The court may inquire into the background of the petitioner and shall have
137 access to any reports or records relating to the petitioner that are on file with the
138 secretary of corrections or the prisoner review board.

139 (i) Hearing. At the hearing on the petition, the court shall order the
140 petitioner's arrest record, conviction, or diversion expunged if the court finds that:

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

144 (2) The circumstances and behavior of the petitioner warrant the
145 expungement; and

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

147 (4) All assessed costs, fees and fines associated with the conviction or
148 diversion agreement sought to be expunged have been paid.

149 (j) Expungement Order; Notification; Effect of Order; Nondisclosure
150 Exceptions. When the court has ordered an arrest record, conviction or diversion
151 expunged, the order of expungement shall state the information required to be
152 contained in the petition. The clerk of the court shall send a certified copy of the order of
153 expungement to the Kansas Bureau of Investigation which shall notify the Federal
154 Bureau of Investigation, the secretary of corrections and any other criminal justice
155 agency which may have a record of the arrest, conviction, or diversion. If the case was
156 appealed from municipal court, the clerk of the district court shall send a certified copy
157 of the order of expungement to the municipal court. The municipal court shall order the
158 case expunged once the certified copy of the order of expungement is received. After
159 the order of expungement is entered, the petitioner shall be treated as not having been
160 arrested, convicted or diverted of the crime, except that:

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

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

166 (i) In any application for licensure as a private detective, private
167 detective agency, certification as a firearms trainer pursuant to K.S.A. 75-
168 7b21, and amendments thereto, or employment as a detective with a
169 private detective agency, as defined by K.S.A. 75-7b01, and amendments
170 thereto; as security personnel with a private patrol operator, as defined by
171 K.S.A. 75-7b01, and amendments thereto; or with an institution, as
172 defined in K.S.A. 76-12a01, and amendments thereto, of the Department
173 for Aging and Disability Services;

174 (ii) In any application for admission, or for an order of
175 reinstatement, to the practice of law in this state;

176 (iii) To aid in determining the petitioner's qualifications for
177 employment with the Kansas Lottery or for work in sensitive areas within
178 the Kansas Lottery as deemed appropriate by the executive director of the
179 Kansas Lottery;

180 (iv) To aid in determining the petitioner's qualifications for
181 Executive Director of the Kansas Racing and Gaming Commission, for
182 employment with the Commission or for work in sensitive areas in
183 parimutuel racing as deemed appropriate by the Executive Director of the
184 Commission, or to aid in determining qualifications for licensure or renewal
185 of licensure by the Commission;

186 (v) To aid in determining the petitioner's qualifications for the
187 following under the Kansas Expanded Lottery Act:

188 (A) Lottery gaming facility manager or prospective manager,
189 racetrack gaming facility manager or prospective manager, licensee
190 or certificate holder; or

191 (B) An officer, director, employee, owner, agent or contractor
192 thereof;

193 (vi) Upon application for a commercial driver's license under
194 K.S.A. 8-2125 through 8-2142, and amendments thereto;

195 (vii) To aid in determining the petitioner's qualifications to be an
196 employee of the state Gaming Agency;

197 (viii) To aid in determining the petitioner's qualifications to be an
198 employee of a tribal gaming commission or to hold a license issued
199 pursuant to a tribal-state gaming compact;

200 (ix) In any application for registration as a broker-dealer, agent,
201 investment adviser or investment adviser representative, all as defined in
202 K.S.A. 17-12a102 and amendments thereto;

203 (x) In any application for employment as a law enforcement
204 officer, as defined in K.S.A. 22-2202 or 74-5602, and amendments
205 thereto; or

206 (xi) For applications to aid in determining the petitioner's
207 qualifications for a license to carry a concealed weapon pursuant to the

Personal and Family Protection Act, K.S.A. 75-7c01 et seq. and amendments thereto; or

(xii) For applications received on and after July 1, 2016, to aid in determining the petitioner's qualifications for a license issued by the Kansas Attorney General to act as a bail enforcement agent.

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

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

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

(l) Employment/License Application. Subject to the disclosures required pursuant to subsection (j) of this section, in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records, conviction, or diversion of an offense has been expunged may state that such person has never been arrested, convicted, or diverted of such offense.

(m) Disclosure of records related to expungement. Whenever the record of any arrest, conviction, or diversion has been expunged, 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 private detective agency or a 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 the Department for Aging and Disability Services, 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 for Aging and Disability Services 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;

(7) The supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of

attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;

(8) The Kansas Lottery, and the request is accompanied by a statement that the request is being made to aid in determining 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;

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

(10) The Kansas Racing and Gaming Commission, or a designee of the Commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications of the 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;

(11) 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;

(12) 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 or a license to act as a bail enforcement agent;

(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

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

301 Section 2. That original § 2.110.660 of The Code of the City of Topeka,
302 Kansas, is hereby specifically repealed.

303 Section 3. This ordinance shall take effect and be in force from and after its
304 passage, approval and publication in the official City newspaper.

305 Section 4. This ordinance shall supersede all ordinances, resolutions or rules,
306 or portions thereof, which are in conflict with the provisions of this ordinance.

307 Section 5. Should any section, clause or phrase of this ordinance be declared
308 invalid by a court of competent jurisdiction, the same shall not affect the validity of this
309 ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

310 PASSED AND APPROVED by the City Council on October 4, 2016.

311
312 CITY OF TOPEKA, KANSAS

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Larry E. Wolgast, Mayor

318 ATTEST:

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323 Brenda Younger, City Clerk