

A close-up photograph of several metal nuts and bolts. The image is overlaid with a color gradient that transitions from purple and blue on the left to yellow and orange on the right. The text is centered over the image.

# Nuts and Bolts of Kansas Expungement Law & Practice

---



Douglas County  
Legal Aid  
Society, Inc.

Legal Aid Clinic  
at KU Law



# Expungement statutes

---

K.S.A. 21-6614: expungement of criminal conviction/diversion in district court

K.S.A. 12-4516: expungement of criminal conviction/diversion in municipal court

K.S.A. 22-2410: expungement of arrest record

K.S.A. 12-4516a: expungement of arrest for municipal ordinance violation

K.S.A. 38-2312: expungement of juvenile record

# Waiting Period

---

“Waiting period” after satisfied sentence imposed:

- No waiting period after completing specialty court program;
- One year: prostitution, if acting under coercion of another;
- Three years: most misdemeanors and lower level felonies;
- Five years: higher level felonies, DUI, DWS;
- Ten years: DUI 2nd or subsequent;
- Never: murder, manslaughter, certain sex offenses, child endangering, abuse of a child.

IN THE \_\_\_\_\_ JUDICIAL DISTRICT  
DISTRICT COURT OF \_\_\_\_\_ COUNTY, KANSAS

THE STATE OF KANSAS

Case No. \_\_\_\_\_

vs.

\_\_\_\_\_ [Name]

Defendant

**PETITION FOR EXPUNGEMENT OF CONVICTION OR DIVERSION**

Pursuant to K.S.A. 21-6614.



I respectfully request of the Court an order of expungement of my  conviction and related arrest records **OR**  diversion record and related arrest records. In support thereof, I state the following:

1. My full name is \_\_\_\_\_.

2. My full name at the time of my arrest or conviction, if different than #1, was

\_\_\_\_\_.

2. My full name at the time of my arrest or conviction, if different than #1, was

\_\_\_\_\_.

3. I am a \_\_\_\_\_ [Race] \_\_\_\_\_ [Sex] born in \_\_\_\_\_ [Year of Birth].

4. I was arrested in \_\_\_\_\_ County, Kansas on \_\_\_\_\_ [Date] by

\_\_\_\_\_ [Law Enforcement Agency] and charged with the

crime of \_\_\_\_\_.

5. I was convicted of \_\_\_\_\_ on \_\_\_\_\_ [Date].

**OR**

I was granted a diversion for the crime of \_\_\_\_\_ on

\_\_\_\_\_ [Date].

6. The convicting court or diverting authority was \_\_\_\_\_.

7. The date of final discharge was \_\_\_\_\_.

8. *(Select and complete either Option A or B, NOT both)*

**Option A.**

i. More than  one  three  five  ten years have elapsed since I fulfilled the terms of a diversion agreement, satisfied the sentence imposed, or was discharged from probation, a community services program, parole, post-release supervision, conditional release or a suspended sentence; and

ii. I have not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against me.

iii. *(check box if applicable)*

I was convicted/ received a diversion for prostitution and I was acting under coercion.

Coercion means: threats of harm or physical restraint against any person; a

**Option B.**

I successfully completed a specialty court program. My conviction is for an offense that would normally be eligible for expungement after three years. No proceeding involving a felony is presently pending or being instituted against me.

9. The conviction or diversion for which expungement is sought is not one of the offenses set out in K.S.A. 21-6614(e), for which no expungement is permitted.

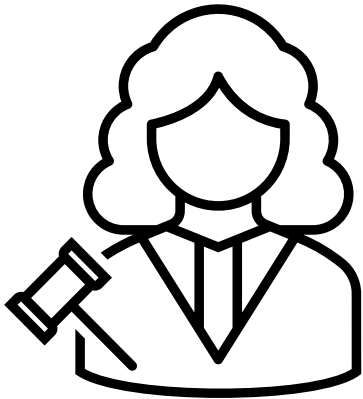
I affirm under penalty of perjury that the statements in this Petition are accurate to the best of my knowledge and I respectfully request that the Court set this matter for hearing and grant the expungement.



# Expungement of Conviction or Diversion

## K.S.A. 21-6614

---



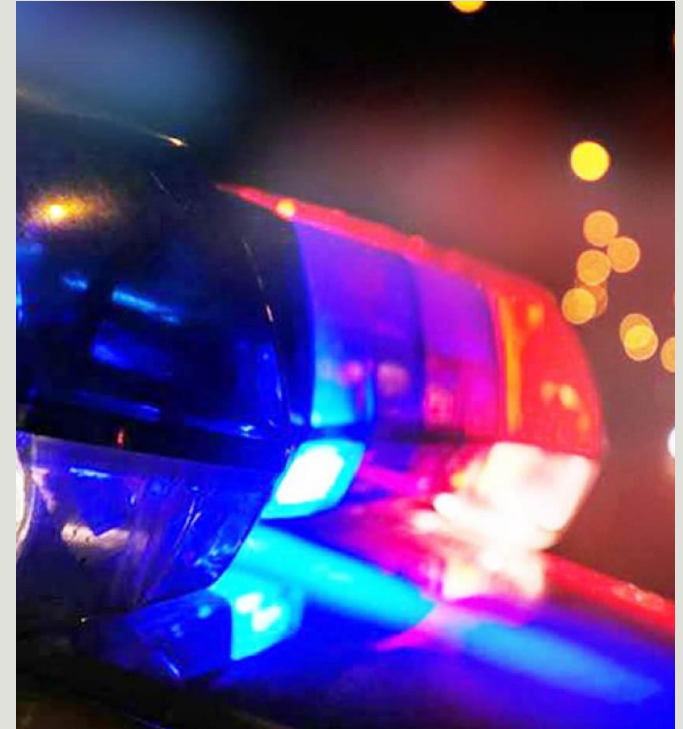
Court shall order expungement if:

- Petitioner has not been convicted of a felony in the past two years;
- No such case is currently pending against Petitioner;
- Circumstances and behavior of Petitioner warrant the expungement;
- The expungement is consistent with the public welfare;
- If felony, possession of a firearm by the petitioner is not likely to pose a threat to public safety.

# Expungement - Arrest Record

---

- No time requirement before filing;
- Arrest record shall be expunged if:
  - arrest was due to mistaken identity,
  - court found no probable cause for arrest,
  - Petitioner was later found not guilty, or
  - Expungement would be in the best interests of justice and a) charges have been dismissed or b) charges are unlikely to be filed.



K.S.A. 22-2410 and 12-4516a.

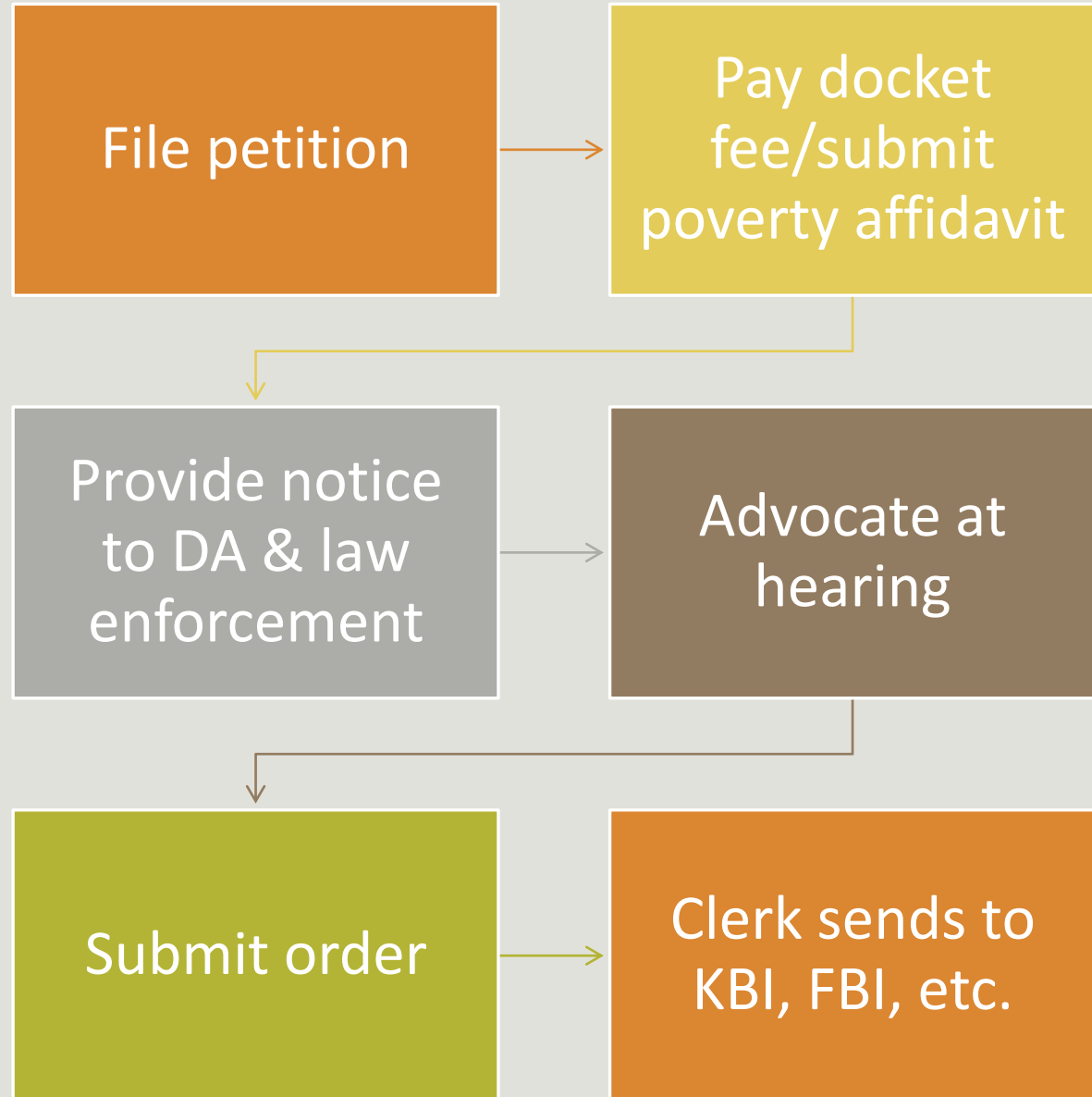
# Expungement of Juvenile Record

Expungement shall be granted if:

- Petitioner has reached age 23 OR two years have passed since final discharge, OR one year if adjudication for prostitution, OR sentence complete if crime committed because juvenile was victim of trafficking;
- Since discharge, **Petitioner has not been convicted/adjudicated of any offense (other than minor traffic offense)** and there are no pending proceedings; and
- The circumstances and behavior of Petitioner warrant the expungement.

K.S.A. 38-2312.

# General Process



## Effect of Expungement

K.S.A. 21-6614 (i), (l)

---

Petitioner to be treated as not having been arrested, convicted, or diverted of the crime...but...

---

Conviction remains a part of criminal history for future sentencing purposes,

---

Petitioner must disclose expunged record in certain applications, and

---

Records custodian may disclose record in limited circumstances.

A background image of a library bookshelf. The top shelf is filled with books, with a blue label 'D' in the center. The middle shelf is also filled with books, with a blue label 'E' in the center. A decorative brown lace-like border runs across the middle of the image, partially covering the books. The text 'Interesting Scenarios' is overlaid in white, centered on the image.

# Interesting Scenarios

# Which Statute Applies?

---

*State v. Jaben*, 277 P.3d 417 (Kan. 2012).

Unless language is clear that the statute applies retrospectively, the governing expungement statute is the one in effect at the time the crimes were committed.





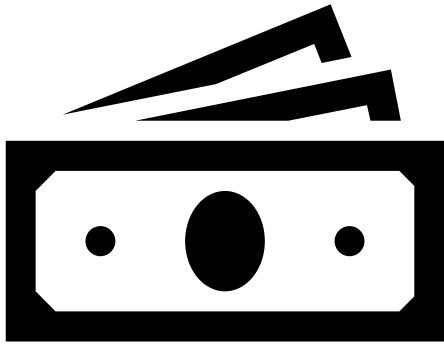
Unpaid  
Fines/Fees/Restitution

---




# Unpaid Fines/Fees/Restitution

---



- May be able to argue that judgment order is void.
- K.S.A. 60-2403: renewal affidavit must be filed or execution issued every 5 years, or order becomes dormant. If no motion to revive is filed within 2 years (K.S.A. 60-2404), order becomes void and judge must release upon request IF order is void as of July 1, 2015.
- Before July 1, 2015, restitution was treated differently. Renewal affidavit had to be filed every 10 years.
- After July 1, 2015, no order for restitution, court costs, or fines becomes dormant then void.

A photograph of a large filing cabinet filled with numerous brown folders and papers. The text "Offender Registry" is overlaid in white, centered across the middle of the image. A thin white horizontal line is positioned below the text.

# Offender Registry

# Expungement & Registration

---

- Effective July 1, 2011, expungement statute prohibits expungement if still subject to registration requirement. (K.S.A. 21-6614(f)).
- KORA amended effective July 1, 2012: if expungement granted while still subject to registration, must continue to register but not be subject to public registration. (K.S.A. 22-4909(e)).
- SO, if crime of conviction was committed
  - After July 1, 2011: no expungement while required to register under KORA.
  - Before July 1, 2011: expungement can be granted; offender must register but not on public list.

# Relief from Drug Offender Registry

K.S.A. 22-4908

---

- Petitioner has “registered for a period of at least five years after the date of parole, discharge or release, whichever date is most recent, or, if not confined, five years from the date of conviction or adjudication.”
- Petitioner has not been convicted of a felony in the past five years and no such felony proceeding is pending,
- Petitioner’s circumstances and behavior and treatment history demonstrate sufficient rehabilitation that warrants relief, and
- Registration is no longer necessary to promote public safety.





# Thank you!

---

DCLAS main number –  
(785) 864-5564

Melanie Daily  
melaniedaily@ku.edu

Meredith Schnug  
mschnug@ku.edu