On March 28, 2018, Senator Richard Wilborn asked the Judicial Council to study 2019 S.B. 154 and S.B. 227. S.B. 154 proposed to implement a separate procedure for a human trafficking victim to petition to set aside certain convictions or diversion agreements and related arrest records. S.B. 227 proposed changes to address the compulsion defense, expungement, and offender registration requirements for victims of human trafficking who themselves engage in criminal conduct as a result of the offenses against them. On June 7, 2019, the Judicial Council referred the study to the Criminal Law Advisory Committee with the addition of three ad hoc members with expertise on the subject of human trafficking (the Committee).

COMMITTEE MEMBERSHIP

The members of the Judicial Council Criminal Law Advisory Committee are:

Victor Braden, Chair, Deputy Attorney General; Topeka

Natalie Chalmers, Assistant Solicitor General; Topeka

Randall Hodgkinson, Kansas Appellate Defender Office & Visiting Assistant Professor of Law at Washburn University School of Law; Topeka

Sal Intagliata, Member at Monnat & Spurrier, Chartered; Wichita

Christopher M. Joseph, Partner at Joseph Hollander & Craft, LLC; Topeka

Ed Klumpp, Chief of Police-Retired, Topeka Police Department; Topeka

Steven L. Opat, Geary County Counselor; Junction City

Hon. Cheryl A. Rios, District Court Judge in the Third Judicial District; Topeka

Ann Swegle, Sedgwick County Deputy District Attorney; Wichita

Kirk Thompson, Director of the Kansas Bureau of Investigation; Topeka

Rep. John Wheeler, Kansas House of Representatives, District 123; Garden City

Ronald Wurtz, Retired Public Defender (Federal and Kansas); Topeka

Prof. Corey Rayburn Yung, KU School of Law Professor; Lawrence

Ad Hoc Members:

Lucy Bloom, Executive Director of Veronica’s Voice; Kansas City

Dr. Karen Countryman-Roswurm, Associate Professor and Executive Director of the Center for Combating Human Trafficking; Wichita

Nate Van Emon, Partner at Stinson, LLP; Kansas City

METHOD OF STUDY

The Committee met three times in person and once via conference call between September and November 2019. In preparation for the discussion of S.B. 227 and S.B. 154, the Committee reviewed the study request, the bills and the materials listed on page 12. In addition, the Committee invited Kate Mogulescu, Assistant Professor of Clinical Law at Brooklyn Law School and the Director of the ABA’s Survivor Reentry Project, to attend its first meeting to give the Committee background on the issues and explain how states across the country have addressed these issues. A copy of the study request and related bills is on page 28.

DISCUSSION

Human trafficking victims are often required by their trafficker to commit a wide variety of crimes. The most commonly thought of crime committed by a sex trafficking victim is the crime of selling sexual relations; however, both sex and labor trafficking victims are often charged with crimes involving theft, drug sales, drug use, fraud, or truancy. It is the victim who is charged and convicted of the crime, even when the crime was committed as a direct result of
the victim’s trafficking situation.\(^1\) Many argue that trafficking victims should be recognized and treated as victims, not criminals.\(^2\)

**2019 S.B. 154 - Setting Aside or Vacatur of a Conviction**

S.B. 154 proposed to create a new procedure that would allow any conviction or diversion to be “set aside” if the conviction concerned acts committed by the person as a result of being a victim of human trafficking. The court could set aside a conviction or diversion if the court found that the petitioner was a victim of human trafficking, and the petitioner could prove by a preponderance of the evidence that the petitioner was acting under coercion caused by the act of another at the time of the offense. The order setting aside the conviction would nullify the conviction or diversion agreement, deem the conviction or diversion to have been vacated due to a substantive defect in the underlying criminal proceedings, and remove all civil disabilities and disqualifications imposed as a result of the conviction or diversion.

If the court sets aside the conviction or diversion, all related arrest records would be expunged and purged from all applicable state and federal systems. This would include the local law enforcement agency, the Kansas Bureau of Investigation, the Kansas Department of Corrections, and the state and federal criminal justice information system central repository. It would be as if the offense never occurred.

This process of setting aside a conviction is commonly referred to as vacatur. Vacatur of records does not merely erase the conviction or diversion in the eyes of the law. Vacatur alters the merits of the underlying record.\(^3\) Advocates of a set aside or vacatur process argue that vacatur provides the best criminal record relief for victims of human trafficking because it is the


criminal justice system acknowledging that the victim, because of his or her status as a victim not a perpetrator, should not have been charged with the crime in the first place. Unlike expungement, criminal records that are vacated are no longer available for disclosure to anyone.

The Committee was concerned about the complete destruction of all records relating to an incident leading to a criminal charge. If all court and law enforcement records were destroyed, it could destroy valuable information that could be used in a future investigation or prosecution of the trafficker or another perpetrator. A majority of the Committee agreed that the criminal conviction or diversion should still be available for disclosure in some instances.

A majority of the Committee recommends against the creation of a new vacatur procedure in Kansas. The majority recommends working within Kansas’ already established expungement procedures and provide human trafficking victims relief from certain convictions or diversion as outlined below.

Compensation for persons wrongfully convicted and imprisoned

If the legislature decides to enact a set aside or vacatur procedure, the Committee recommends that the legislature carefully evaluate how the vacatur provisions would interact with K.S.A. 60-5004, which authorizes the filing of a civil action for persons wrongfully convicted and imprisoned. K.S.A. 60-5004 is broad and includes convictions that are vacated. Connecticut provides an example of a statute that excludes the vacatur of a selling sexual relations conviction on the basis of being a victim of trafficking from supporting a civil claim for compensation by the state.

The provision states:

“If the defendant proves that he or she was a victim of trafficking in persons under said section or a victim of a criminal violation of said chapter at the time of the offense, the court shall vacate any judgment of conviction and dismiss any
charges related to the offense. The vacating of a judgment of conviction and
dismissal of charges pursuant to this section shall not constitute grounds for an
award of compensation for wrongful arrest, prosecution, conviction or
incarceration pursuant to section 54-102uu or any other provision of the general
statutes.” C.G.S.A. § 54-95c.

If a human trafficking victim vacatur procedure is enacted in Kansas, the Committee
recommends that the statutory framework include a provision exempting any vacatur under
the new statutes from constituting grounds for claim under K.S.A. 60-5004.

2019 S.B. 227

2019 S.B. 227 proposed amendments to address the availability of the compulsion
defense, expungement, and offender registration requirements for victims of human trafficking
who themselves engage in criminal conduct as a result of the offenses against them.

Compulsion Defense

S.B. 227 proposed to amend Kansas’s compulsion defense in K.S.A. 2018 Supp. 21-5206
by allowing a person charged with a crime, other than murder or voluntary manslaughter, to
assert that the person was forced, coerced or deceived into performing the crime as a direct
result of the person’s status as a victim of human trafficking, aggravated human trafficking, or
commercial sexual exploitation of a child. If the person could prove the person’s status as a
victim, by a preponderance of the evidence, and the person’s criminal conduct was the direct
result of the person’s status as a victim of human trafficking, then the person would not be
guilty of the crime. Proponents of the amendment argued that a specific compulsion defense is
necessary for human trafficking victims because the victims can rarely show that their actions
were performed “under the compulsion or threat of the imminent infliction of death or great
bodily harm” to the victim or the victim’s family, as required in K.S.A. 2018 Supp. 21-5206(a).
Some of the Committee including the Chair, were significantly concerned that the proposed amendments applied to any crime except murder or voluntary manslaughter. In addition, the Chair, in concert with a minority, were strongly concerned that there could be equal protection issues with creating a special version of the compulsion defense for a certain group of persons. In order to satisfy the requirements under the Equal Protection Clause, the state would be required to have a rational basis for creating an advantage for a special class of defendants. These concerns should be weighed heavily by the legislature as it considers the language of any proposed bill.

Instead of amending the compulsion defense, the Committee recommends amending the affirmative defense to the specific crime of human trafficking found in K.S.A 2019 Supp. 21-5426(e). The Committee recognized that providing an affirmative defense to the crime of human trafficking does not provide additional relief to human trafficking victims convicted of other offenses, such as burglary, robbery, or theft. However, a majority of the Committee thought it was sufficient that the current compulsion defense and self-defense defense were still available to those victims.

The Committee recommends the human trafficking affirmative defense be made available to adults, not just minors. It also recommends expanding the scope of the defense to be a defense to human trafficking or aggravated human trafficking, with the exception of when the human trafficking results in a death under K.S.A. 2019 Supp. 21-5426(b)(3). The Committee’s recommend language begins on page 13.

Expungement

S.B. 227 proposed to amend K.S.A. 2018 Supp. 21-6614 and 38-2312 to allow a victim of human trafficking to expunge any conviction, diversion, or juvenile adjudication if the victim could prove, by a preponderance of the evidence, that the victim was acting under coercion caused by the act of another at the time of the offense. The bill included a broad definition of coercion, as well as, created a rebuttable presumption that the person was a victim of human
trafficking if certain documentation was provided. Because the amendments to the expungement statutes would allow expungement of any offense, even those requiring the offender to register under the Kansas Offender Registration Act, the bill amended K.S.A. 2018 Supp. 21-6614(f) to allow a human trafficking victim to expunge a conviction, diversion, or adjudication despite the requirement to register. The bill also proposed an amendment to K.S.A. 2018 Supp. 22-4908 to require the offender be relieved of the requirement to register if the conviction, diversion, or adjudication was expunged based on a finding that the person committed the offense as a result of being a victim of human trafficking.

A majority of the Committee did not approve of all the amendments proposed to expungement statutes in S.B. 227. However, the Committee recommends that Kansas provide additional relief to victims of human trafficking by working within its existing expungement framework rather than creating a new vacatur or set aside process. Within the expungement framework, the Committee recommends that the statute allow victims of human trafficking to petition for expungement of any offense, an attempt, conspiracy, or criminal solicitation, except for the offenses enumerated in K.S.A. 2019 Supp. 21-6614(d)(11)-(15). Those crimes include capital murder, murder in the first or second degree, and voluntary or involuntary manslaughter.

A majority of the Committee agreed that the court should grant expungement if the court finds, by a preponderance of the evidence, that (1) the petitioner was a victim of human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child; (2) the petitioner was coerced into committing the crime as a result of such victimization; (3) the circumstances and behavior of the petitioner warrant the expungement; and (4) the expungement is consistent with the public welfare. A minority of Committee members did not want to require the petitioner to show that circumstances and behavior warrant the expungement. A minority thought the expungement should instead be based on the premise that the expungement is warranted because the state should never have charged or convicted the petitioner of the offense in the first place. A majority of the Committee agreed the
petitioner should be required to show change in the petitioner's circumstances, for example, having separated from the human trafficking scheme, or supporting himself or herself through a job other than selling sexual relations.

The Committee received feedback from lawyers and human trafficking victim advocates in California and Nebraska that supported the premise that the majority of human trafficking victims are not ready to work on expunging his or her convictions until many years after the human trafficking victim has escaped from his or her trafficker and has had time to heal and build a different life. Therefore, a majority of the Committee agreed that human trafficking victims should be required to complete all sentencing provisions of the offense and follow the same expungement timeframe requirements already set out in statute.

The Committee recommends human trafficking victims have the ability to expunge any sex offense or other offense requiring the petitioner to register as provided in the Kansas Offender Registration Act. Therefore, if a human trafficking victim is convicted of promoting the sale of sexual relations, the human trafficking victim would be required to satisfy the sentence imposed, be discharged from any probation, postrelease supervision, conditional release or suspended sentence, and then wait three or more years before filing a petition to expunge the conviction of promoting the sale of sexual relations. After completion of all sentencing requirements and the required 3 year waiting period, the victim would still be under the civil requirement to register on the Kansas Offender Registration. However, the Committee recommends that the statute authorize the human trafficking victim to petition for expungement of the registerable offense before the period of registration is complete. The expungement would then relieve the petitioner from the duty to register. This would require an amendment to K.S.A. 2019 Supp. 22-4908.

4 K.S.A. 21-6420.
5 See. K.S.A. 21-6614(a) (setting out the requirements for the expungement of a misdemeanor).
Though not required by statute, in practice, “satisf[action of] the sentence imposed” is commonly interpreted to mean that the offender must also finish paying all fines and court costs. The Committee agreed that requiring all fines and costs be paid before expungement is a heavy burden on human trafficking victims and all indigent offenders. Often, the record of the conviction or diversion prohibits individuals from obtaining a job that would then enable the individual to pay off the outstanding fines and court costs. The Committee recommends the special expungement rules for human trafficking victims should include the following provision:

“Outstanding costs, fees, fines, or restitution shall not be a reason to deny expungement under this section if the court otherwise finds the petitioner satisfies the elements set forth in subsection (c)(2). An unwillingness, rather than inability, to pay such fees and costs can be a factor in denying expungement. Expungement shall not release the petitioner from the obligation to pay outstanding costs, fees, fines, or restitution.”

A minority of the Committee was concerned that courts would differ in their interpretation of the provision allowing an individual’s unwillingness to pay to be a factor in denying an expungement. In order to avoid abuse of this provision, a majority of the Committee thought it was necessary to clarify that only an inability to pay would warrant expungement without complete payment of costs, fees, fines, or restitution.

The Committee unanimously agreed that all offenders, not just those who are human trafficking victims, should be allowed to expunge an arrest or conviction if found to be unable to pay all costs, fees, fines, and restitution in full. Though the Committee agreed that such an amendment to Kansas’ expungement statutes should occur, the Committee thought such a recommendation was outside the scope of the assigned study.

A majority of the Committee recommends the statutes exempt human trafficking victims seeking expungement under the special rules from paying a docket fee or any other fee when he or she files the petition for expungement. The Committee recognized that many
former human trafficking victims struggle to find jobs. The Committee agreed that removing the requirement to pay a docket or other fee would remove a significant barrier to the expungement process.

A draft of how the Committee’s recommendations may look within one of Kansas’s expungement statutes, specifically K.S.A. 21-6614, begins on page 16. Similar amendments would need to be made to the municipal expungement rules in K.S.A. 12-4516, and the juvenile expungement rules in K.S.A. 38-2312.

**RECOMMENDATION**

A majority of the Committee recommends against the passage of 19 S.B. 154 and S.B. 227. A majority of the Committee recommends against the creation of a new vacatur procedure in Kansas; however, if a vacatur procedure is enacted, the Committee recommends it include a provision exempting any vacatur under the new statutes from constituting grounds for a claim under K.S.A. 60-5004.

A majority of the Committee recommends against any amendments to Kansas’ compulsion defense. However, if the legislature wishes to amend a defense to assist victims of human trafficking, the Committee recommends expanding the scope of the current affirmative defense to the crime of aggravated human trafficking by allowing the defense to be used by adults or minors charged with human trafficking or aggravated human trafficking, except for aggravated human trafficking that resulted in a death.

If the legislature wishes to provide additional post-conviction relief to victims of human trafficking, the Committee recommends Kansas provide it by working within the existing expungement framework. The Committee recommends the court order expungement of any crime except a select few if a petitioner can show:

(1) the petitioner was a victim of human trafficking at the time the offense was committed,
(2) the petitioner was coerced into committed the crime as a result of such victimization,
(3) the circumstances and behavior of the petitioner warrant the expungement, and
(4) the expungement is consistent with the public welfare.

The Committee recommends the statutes allow expungement for victims of human trafficking regardless of whether the petitioner has paid off all fines, fees, and court costs from the underlying offense. It also recommends the statutes exempt petitioners from paying a docketing or other fee at the time of the filing of the petition.

The Committee recommends the statutes allow victims of human trafficking to expunge any offense regardless of whether it requires the petitioner to register under the Kansas Offender Registration Act. The Committee also recommends the expungement relieve the petitioner of any future registration requirements.
List of materials reviewed by the Committee

- Kansas’s current statutes governing the compulsion defense, expungement, and offender registration.
- Various statutes from California, Colorado, Nebraska, and Florida.
- Feedback from advocates, prosecutors, and defense attorneys in California and Nebraska about how the laws regarding affirmative defenses, expungement, and vacatur in their state has worked.
- Case law, including:

(a) Human trafficking is:
(1) Except as provided in subsection (b)(4) and (5), the intentional recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjecting the person to involuntary servitude or forced labor;
(2) intentionally benefitting financially or by receiving anything of value from participation in a venture that the person has reason to know has engaged in acts set forth in subsection (a)(1);
(3) knowingly coercing employment by obtaining or maintaining labor or services that are performed or provided by another person through any of the following:
   (A) Causing or threatening to cause physical injury to any person;
   (B) physically restraining or threatening to physically restrain another person;
   (C) abusing or threatening to abuse the law or legal process;
   (D) threatening to withhold food, lodging or clothing; or
   (E) knowingly destroying, concealing, removing, confiscating or possessing any actual or purported government identification document of another person; or
(4) knowingly holding another person in a condition of peonage in satisfaction of a debt owed the person who is holding such other person.

(b) Aggravated human trafficking is:
(1) Human trafficking, as defined in subsection (a), involving the commission or attempted commission of kidnapping, as defined in K.S.A. 2019 Supp. 21-5408(a), and amendments thereto;
(2) human trafficking, as defined in subsection (a), committed in whole or in part for the purpose of the sexual gratification of the defendant or another;
(3) human trafficking, as defined in subsection (a), resulting in a death;
(4) recruiting, harboring, transporting, providing or obtaining, by any means, a child knowing that the child, with or without force, fraud, threat or coercion, will be used to engage in: (A) Forced labor; (B) involuntary servitude; or (C) sexual gratification of the defendant or another involving the exchange of anything of value; or
(5) hiring a child by giving, or offering or agreeing to give, anything of value to any person, to engage in manual or other bodily contact stimulation of the genitals of any person.
with the intent to arouse or gratify the sexual desires of the offender or another, sexual intercourse, sodomy or any unlawful sexual act, and the offender recklessly disregards the age of the child.

(c) (1) Human trafficking is a severity level 2, person felony.
(2) Aggravated human trafficking is a severity level 1, person felony, except as provided in subsection (c)(3).
(3) Aggravated human trafficking or attempt, conspiracy or criminal solicitation to commit aggravated human trafficking is an off-grid person felony, when the offender is 18 years of age or older and the victim is less than 14 years of age.
(4) In addition to any other sentence imposed, a person convicted under subsection (c)(1) shall be fined not less than $2,500 nor more than $5,000. In addition to any other sentence imposed, a person convicted under subsection (c)(2) or (c)(3) shall be fined not less than $5,000. All fines collected pursuant to this section shall be remitted to the human trafficking victim assistance fund created by K.S.A. 75-758, and amendments thereto.
(5) In addition to any other sentence imposed, for any conviction under this section, the court may order the person convicted to enter into and complete a suitable educational or treatment program regarding commercial sexual exploitation of a child.

(d) If the offender is 18 years of age or older and the victim is less than 14 years of age, the provisions of:
(1) K.S.A. 2019 Supp. 21-5301(c), and amendments thereto, shall not apply to a violation of attempting to commit the crime of aggravated human trafficking pursuant to this section;
(2) K.S.A. 2019 Supp. 21-5302(d), and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of aggravated human trafficking pursuant to this section; and
(3) K.S.A. 2019 Supp. 21-5303(d), and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of aggravated human trafficking pursuant to this section.

(e) It shall be an affirmative defense to any prosecution under this section, except subsection (b)(3), subsection (b)(4) or (5) that the defendant:
(1) Was under 18 years of age at the time of
the violation; and (2) committed the violation because such defendant, at the time of the violation, was subjected to human trafficking, or aggravated human trafficking, or commercial sexual exploitation of a child, as defined by this section.

(f) It shall not be a defense to a charge of aggravated human trafficking, as defined in subsection (b)(4) or (5), that: (1) The victim consented or willingly participated in the forced labor, involuntary servitude or sexual gratification of the defendant or another; or (2) the offender had no knowledge of the age of the victim.

(g) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for commercial sexual exploitation of a child, as defined by K.S.A. 2019 Supp. 21-6422, and amendments thereto, or for any form of homicide.

(h) The provisions of this section shall not apply to the use of the labor of any person incarcerated in a state or county correctional facility or city jail.

(i) As used in this section:
   (1) "Child" means a person under 18 years of age; and
   (2) "peonage" means a condition of involuntary servitude in which the victim is forced to work for another person by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process.
Examples of how the Committee’s recommendations could be incorporated into K.S.A. 2019 Supp. 21-6614.

K.S.A. 21-6614

(a)(1) Except as provided in subsections (b), (d), (e), (f), and (g), any person convicted in this state of a traffic infraction, cigarette or tobacco infraction, misdemeanor or a class D or E felony, or for crimes committed on or after July 1, 1993, any nongrid felony or felony ranked in severity levels 6 through 10 of the nondrug grid, or for crimes committed on or after July 1, 1993, but prior to July 1, 2012, any felony ranked in severity level 4 of the drug grid, or for crimes committed on or after July 1, 2012, any felony ranked in severity level 5 of the drug grid may petition the convicting court for the expungement of such conviction or related arrest records if three or more years have elapsed since the person: (A) Satisfied the sentence imposed; or (B) was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence.

(2) Except as provided in subsections (b), (d), (e), (f), and (g), any person who has fulfilled the terms of a diversion agreement may petition the district 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.

(b) Any person convicted of prostitution, as defined in K.S.A. 21-3512, prior to its repeal, convicted of a violation of K.S.A. 21-6419, and amendments thereto, or who entered into a diversion agreement in lieu of further criminal proceedings for such violation, may petition the convicting court for the expungement of such conviction or diversion agreement and related arrest records if:

(1) One or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; and

(2) such person can prove they were acting under coercion caused by the act of another. For purposes of this subsection, “coercion” means: Threats of harm or physical restraint against any person; a scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in bodily harm or physical restraint against any person; or the abuse or threatened abuse of the legal process.

(3) Nothing in this subsection precludes a person from petitioning for expungement under any other subsection.
(c) Any person with a conviction for any offense or an attempt, conspiracy, or criminal solicitation, except for those offenses enumerated in (f)(11)-(15), may petition the convicting court for the expungement of such conviction or related arrest records if the person alleges that the conviction concerned acts committed by the person as a result of being a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child at the time the crime was committed. This subsection also applies to any person who entered into a diversion agreement in lieu of further criminal proceedings for any offense.

(1) The person may apply for expungement according to the limitations set forth in subsections (a), (b)(1), (d), and (e).

(2) The court shall order expungement if the court finds the following by a preponderance of the evidence:
   (A) the petitioner was a victim of human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child;
   (B) the petitioner was coerced into committing the crime as a result of such victimization;
   (C) the circumstances and the behavior of the petitioner warrant the expungement; and
   (D) the expungement is consistent with the public welfare.

(3) Outstanding costs, fees, fines, or restitution shall not be a reason to deny expungement under this section if the court otherwise finds the petitioner satisfies the elements set forth in subsection (c)(2). An unwillingness, rather than inability to pay such fees and costs can be a factor in denying expungement. Expungement shall not release the petitioner from the obligation to pay outstanding costs, fees, fines, or restitution.

(4) A person petitioning for expungement under this subsection shall not be required to pay a docketing fee or the fee set forth in (h)(2).

(5) Nothing in this subsection precludes a person from petitioning for expungement under any other subsection.

(d)(e) Except as provided in subsections (f) and (g) (e) and (f), no person may petition for expungement until 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, a community correctional services program, parole, postrelease supervision, conditional release or a
suspended sentence, if such person was convicted of a class A, B or C felony, or for crimes committed on or after July 1, 1993, if convicted of an off-grid felony or any felony ranked in severity levels 1 through 5 of the nondrug grid, or for crimes committed on or after July 1, 1993, but prior to July 1, 2012, any felony ranked in severity levels 1 through 3 of the drug grid, or for crimes committed on or after July 1, 2012, any felony ranked in severity levels 1 through 4 of the drug grid, or:

(1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its repeal, or K.S.A. 21-5406, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(2) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(3) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto, or resulting from the violation of a law of another state which is in substantial conformity with that statute;

(4) violating the provisions of K.S.A. 8-142 Fifth, and amendments thereto, relating to fraudulent applications or violating the provisions of a law of another state which is in substantial conformity with that statute;

(5) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(6) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1603, prior to its repeal, or K.S.A. 8-1602 or 8-1604, and amendments thereto, or required by a law of another state which is in substantial conformity with those statutes;

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

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

(e)(d)(1) No person may petition for expungement until 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, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a first violation of K.S.A. 8-1567, and amendments thereto, including any diversion for such violation.

(2) 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, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a second or subsequent violation of K.S.A. 8-1567, and amendments thereto.

(3) Except as provided further, the provisions of this subsection shall apply to all violations committed on or after July 1, 2006. The provisions of subsection (e)(2) shall not apply to violations committed on or after July 1, 2014, but prior to July 1, 2015.

(f)(e)-Except as provided in subsection (c), there shall be no expungement of convictions for the following offenses or of convictions for an attempt to commit any of the following offenses:

(1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 21-5503, and amendments thereto;

(2) indecent liberties with a child or aggravated indecent liberties with a child, as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal, or K.S.A. 21-5506, and amendments thereto;

(3) criminal sodomy, as defined in K.S.A. 21-3505(a)(2) or (a)(3), prior to its repeal, or K.S.A. 21-5504(a)(3) or (a)(4), and amendments thereto;

(4) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior to its repeal, or K.S.A. 21-5504, and amendments thereto;

(5) indecent solicitation of a child or aggravated indecent solicitation of a child, as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal, or K.S.A. 21-5508, and amendments thereto;

(6) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 21-5510, and amendments thereto;

(7) internet trading in child pornography or aggravated internet trading in child pornography, as defined in K.S.A. 21-5514, and amendments thereto;
(8) aggravated incest, as defined in K.S.A. 21-3603, prior to its repeal, or K.S.A. 21-5604, and amendments thereto;

(9) endangering a child or aggravated endangering a child, as defined in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 21-5601, and amendments thereto;

(10) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal, or K.S.A. 21-5602, and amendments thereto;

(11) capital murder, as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 21-5401, and amendments thereto;

(12) murder in the first degree, as defined in K.S.A. 21-3401, prior to its repeal, or K.S.A. 21-5402, and amendments thereto;

(13) murder in the second degree, as defined in K.S.A. 21-3402, prior to its repeal, or K.S.A. 21-5403, and amendments thereto;

(14) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to its repeal, or K.S.A. 21-5404, and amendments thereto;

(15) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to its repeal, or K.S.A. 21-5405, and amendments thereto;

(16) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal, or K.S.A. 21-5505, and amendments thereto, when the victim was less than 18 years of age at the time the crime was committed;

(17) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to its repeal, or K.S.A. 21-5505, and amendments thereto;

(18) a violation of K.S.A. 8-2,144, and amendments thereto, including any diversion for such violation; or

(19) any conviction for any offense in effect at any time prior to July 1, 2011, that is comparable to any offense as provided in this subsection.

(g)(f) Notwithstanding any other law to the contrary, for any offender who is required to register as provided in the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no expungement of any conviction or any part of the offender's criminal record while the offender is required to register as provided in the Kansas
offender registration act. This subsection shall not apply to expungements sought under subsection (c).

(h)(1) When a petition for expungement is filed, the court shall set a date for a hearing of such petition and shall cause notice of such hearing to be given to the prosecutor and the arresting law enforcement agency. The petition shall state the:

(A) Defendant's full name;

(B) full name of the defendant at the time of arrest, conviction or diversion, if different than the defendant's current name;

(C) defendant's sex, race and date of birth;

(D) crime for which the defendant was arrested, convicted or diverted;

(E) date of the defendant's arrest, conviction or diversion; and

(F) identity of the convicting court, arresting law enforcement authority or diverting authority.

(2) Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of $176. On and after July 1, 2019, through June 30, 2025, the supreme court may impose a charge, not to exceed $19 per case, to fund the costs of non-judicial personnel. The charge established in this section shall be the only fee collected or moneys in the nature of a fee collected for the case. Such charge shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee.

(3) All petitions for expungement shall be docketed in the original criminal action. 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 and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the prisoner review board.

(i)(h) Except as provided in subsection (c), at the hearing on the petition, the court shall order the petitioner's arrest record, conviction or diversion expunged if the court finds that:
(1) The petitioner has 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 the petitioner;

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

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

When the court has ordered an arrest record, conviction or diversion expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest, conviction or diversion. If the case was appealed from municipal court, the clerk of the district court shall send a certified copy of the order of expungement to the municipal court. The municipal court shall order the case expunged once the certified copy of the order of expungement is received. After the order of expungement is entered, the petitioner shall be treated as not having been arrested, convicted or diverted of the crime, except that:

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

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

(A) In any application for licensure as a private detective, private detective agency, certification as a firearms trainer pursuant to K.S.A. 75-7b21, and amendments thereto, or employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the Kansas department for aging and disability services;

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

(C) to aid in determining the petitioner's 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;
(D) to aid in determining the petitioner's qualifications for executive director of the Kansas racing and gaming commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(E) to aid in determining the petitioner's qualifications for the following under the Kansas expanded lottery act: (i) Lottery gaming facility manager or prospective manager, racetrack gaming facility manager or prospective manager, licensee or certificate holder; or (ii) an officer, director, employee, owner, agent or contractor thereof;

(F) upon application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

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

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

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

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

(K) to aid in determining the petitioner's 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

(L) to aid in determining the petitioner's qualifications for a license to act as a bail enforcement agent pursuant to K.S.A. 75-7e01 through 75-7e09 and K.S.A. 50-6,141, and amendments thereto;

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

(5) upon commitment to the custody of the secretary of corrections, any previously expunged record in the possession of the secretary of corrections may be reinstated and the expungement disregarded, and the record continued for the purpose of the new commitment.

(k)(j) Whenever a person is convicted of a crime, pleads guilty and pays a fine for a crime, is placed on parole, postrelease supervision or probation, is assigned to a community correctional services program, is granted a suspended sentence or is released on conditional release, 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)(k)(1) Subject to the disclosures required pursuant to subsection (j)(i), 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 a crime has been expunged under this statute may state that such person has never been arrested, convicted or diverted of such crime.

(2) Notwithstanding the provisions of subsection (l)(k)(1), and except as provided in K.S.A. 21-6304(a)(3)(A), and amendments thereto, the expungement of a prior felony conviction does not relieve the individual of complying with any state or federal law relating to the use, shipment, transportation, receipt or possession of firearms by persons previously convicted of a felony.

(m)(l) Whenever the record of any arrest, conviction or diversion has been expunged under the provisions of this section or under the provisions of any other 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 private detective agency or a private patrol operator, 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 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 Kansas 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 prosecutor, 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 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: (A) Lottery gaming facility managers and prospective managers, racetrack gaming facility managers and prospective managers, licensees and certificate holders; and (B) their officers, directors, employees, owners, agents and contractors;
(11) the Kansas sentencing commission;

(12) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications: (A) To be an employee of the state gaming agency; or (B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-gaming compact;

(13) 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;

(14) 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 as a law enforcement officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto;

(15) 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 as defined by K.S.A. 22-2202, and amendments thereto;

(16) 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:

   (A) Carry a concealed weapon pursuant to the personal and family protection act; or

   (B) act as a bail enforcement agent pursuant to K.S.A. 75-7e01 through 75-7e09 and K.S.A. 50-6,141, and amendments thereto; or

(17) the Kansas bureau of investigation for the purposes of:

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

   (B) providing information or documentation to the federal bureau of investigation, in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm.
(n)(m) The provisions of subsection (m)(17) shall apply to records created prior to, on and after July 1, 2011.
March 28, 2019

Nancy Strouse, Executive Director
Kansas Judicial Council
301 SW 10th Avenue
Topeka, Kansas 66612

Dear Nancy:

I am writing to request Judicial Council study of a topic raised by two bills introduced during the 2019 Session and referred to the Senate Committee on Judiciary. After considering these bills and input from the Attorney General, who requested one of the bills, I believe that a more in-depth consideration of the issues raised by the legislation would be appropriate and desirable before the Legislature further considers the bills.

**SB 227 – Concerning human trafficking; relating to victims of human trafficking, aggravated human trafficking or commercial exploitation of a child; and**

**SB 154 – Concerning crimes, punishment and criminal procedure; relating to victims of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child**

SB 227 was introduced by the Senate Committee on Federal and State Affairs at the request of the Attorney General, and would address the availability of the compulsion defense and expungement to and offender registration requirements for victims of human trafficking who themselves engage in criminal conduct as a result of the offenses against them.

SB 154 was introduced by Senator Haley and would implement a separate procedure for a human trafficking victim to petition to set aside certain conviction or diversion agreements and related arrest records.

Neither bill had a hearing during the 2019 Session. Following introduction of the bills, the Attorney General contacted me. He noted the topic of how Kansas law should treat human trafficking victims who themselves engage in criminal conduct as a result of being victimized is a difficult subject matter and there is disagreement within the anti-human trafficking coalition regarding the right approach to this topic. The Attorney General suggested, and I agree, that
Judicial Council study of this topic and the approaches outlined by these two bills could help reach common ground, especially if the Judicial Council's review incorporates divergent points of view from prosecutors, law enforcement, victim advocates, and other interested parties.

Thus, I would appreciate the Judicial Council's consideration of this topic and the two bills described above and any recommendation regarding modifications to the legislation or introduction of alternative legislation. I am aware the Judicial Council is currently conducting at least one study that may have some connection to this topic. I leave it to the wisdom of the Judicial Council whether this topic, if accepted, would best be added to an existing study or pursued as a separate study.

Please let me know if I can provide any further information or answer any questions regarding this request.

Thank you.

Sincerely,

Senator Richard Wilborn

Chairman, Senate Committee on Judiciary
SENATE BILL No. 227
By Committee on Federal and State Affairs 3-14

AN ACT concerning human trafficking; relating to victims of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child; Kansas criminal code; compulsion defense; expungement; Kansas offender registration act; exemption from registration; termination of registration; revised Kansas juvenile justice code; expungement of records or files; amending K.S.A. 2018 Supp. 21-5206, 21-6614, 22-4902, 22-4908 and 38-2312 and repealing the existing sections.

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

Section 1. K.S.A. 2018 Supp. 21-5206 is hereby amended to read as follows: 21-5206. (a) (1) A person is not guilty of a crime other than murder or voluntary manslaughter by reason of conduct that such person performs under the compulsion or threat of the imminent infliction of death or great bodily harm, if such person reasonably believes that death or great bodily harm will be inflicted upon such person or upon such person's spouse, parent, child, brother or sister if such person does not perform such conduct.

(2) A person is not guilty of a crime other than murder or voluntary manslaughter by reason of conduct that such person is forced, coerced or deceived into performing as a direct result of such person's status as a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child.

(A) The person shall be required to prove such person's status as a victim at the time of such conduct by a preponderance of the evidence. An official determination or documentation shall not be required to assert the defense, but an official determination or documentation from a federal, state, local or tribal government agency that indicates the defendant was a victim at the time of such conduct shall create a rebuttable presumption that such conduct was a direct result of being a victim.

(B) As used in this subsection, "coerced" includes, but is not limited to, the following: Causing or threatening to cause injury to any person; physically restraining or threatening to physically restrain another person; abusing or threatening to abuse the law or legal process; threatening to withhold food, lodging or clothing; threatening to or destroying, concealing, removing, confiscating or possessing any actual or
SB 227
purported government identification document of another person; or any
other scheme, plan or pattern intended to cause a person to believe that
failure to perform an act would result in bodily harm or physical restraint
against any person.

(C) At the request of the person asserting the defense on the basis
provided in this paragraph, the court may, at any time, issue a protective
order concerning the protection of the confidentiality of such person.

(b) The defense provided by this section is not available to a person
who is 18 years of age or older and intentionally or recklessly places such
person’s self in a situation in which such person will be subjected to
compulsion or threat.

Sec. 2. K.S.A. 2018 Supp. 21-6614 is hereby amended to read as
follows: 21-6614. (a) (1) Except as provided in subsections (b), (c), (d),
(e) and (f), any person convicted in this state of a traffic infraction,
cigarette or tobacco infraction, misdemeanor or a class D or E felony, or
for crimes committed on or after July 1, 1993, any nongrid felony or
felony ranked in severity levels 6 through 10 of the nondrug grid, or for
crimes committed on or after July 1, 1993, but prior to July 1, 2012, any
felony ranked in severity level 4 of the drug grid, or for crimes committed
on or after July 1, 2012, any felony ranked in severity level 5 of the drug
grid may petition the convicting court for the expungement of such
conviction or related arrest records if three or more years have elapsed
since the person: (A) Satisfied the sentence imposed; or (B) was
discharged from probation, a community correctional services program,
parole, postrelease supervision, conditional release or a suspended
sentence.

(2) Except as provided in subsections (b), (c), (d), (e) and (f), any
person who has fulfilled the terms of a diversion agreement may petition
the district 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.

(b) (1) This subsection shall apply to a person:

(A) Convicted of any offense the person alleges that the conviction
concerned acts committed by the person as a result of being a victim of
human trafficking, aggravated human trafficking or commercial sexual
exploitation of a child, including, but not limited to:

(i) Prostitution, as defined in K.S.A. 21-3512, prior to its repeal, or
selling sexual relations, as defined in K.S.A. 2018 Supp. 21-6419, and
amendments thereto;

(ii) promoting prostitution, as defined in K.S.A. 21-3513, prior to its
repeal, or promoting the sale of sexual relations, as defined in K.S.A. 2018
Supp. 21-6420, and amendments thereto;

(iii) patronizing a prostitute, as defined in K.S.A. 21-3515, prior to its
repeal, or buying sexual relations, as defined in K.S.A. 2018 Supp. 21-6421, and amendments thereto;

(iv) human trafficking or aggravated human trafficking, as defined in K.S.A. 21-3446 or 21-3447, prior to their repeal, or K.S.A. 2018 Supp. 21-5426, and amendments thereto; or

(v) commercial sexual exploitation of a child, as defined in K.S.A. 2018 Supp. 21-6422, and amendments thereto;

(B) convicted of an attempt, conspiracy or criminal solicitation to commit any of the offenses described in this paragraph as the underlying offense; or

(C) who entered into a diversion agreement in lieu of further criminal proceedings for any offense described in this paragraph.

(2) Any person convicted of prostitution, as defined in K.8.A. 213512, prior to its repeal, convicted of a violation of K.8.A. 2018 Supp. 216419, and amendments thereto, or who entered into a diversion agreement in lieu of further criminal proceedings for such violation, A person described in subsection (b)(1) may petition the convicting court for the expungement of the conviction or diversion agreement described in subsection (b)(1) and related arrest records:

(1) one or more years have elapsed since at any time after the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence

If such person can prove by a preponderance of the evidence that they were acting under coercion caused by the act of another at the time of the offense for which the person was convicted or diverted.

For purposes of this subsection, "coercion" means: Threats of harm or physical restraint against any person; a scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in bodily harm or physical restraint against any person; or the abuse or threatened abuse of the legal process.

(c) Except as provided in subsections (b), (e) and (f), no person may petition for expungement until 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, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a class A, B or C felony, or for crimes committed on or after July 1, 1993, if convicted of an off-grid felony or any felony ranked in severity levels 1 through 5 of the nondrug grid, or for crimes committed on or after July 1, 1993, but prior to July 1, 2012, any felony ranked in severity levels 1 through 3 of the drug grid, or for crimes committed on or after July 1, 2012, any felony ranked
in severity levels 1 through 4 of the drug grid, or:

(1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its repeal, or K.S.A. 2018 Supp. 21-5406, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(2) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(3) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto, or resulting from the violation of a law of another state which is in substantial conformity with that statute;

(4) violating the provisions of K.S.A. 8-142 Fifth, and amendments thereto, relating to fraudulent applications or violating the provisions of a law of another state which is in substantial conformity with that statute;

(5) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(6) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603, prior to its repeal, or 8-1604, and amendments thereto, or required by a law of another state which is in substantial conformity with those statutes;

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

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

(d) (1) No person may petition for expungement until 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, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a first violation of K.S.A. 8-1567, and amendments thereto, including any diversion for such violation.

(2) 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, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a second or subsequent violation of K.S.A. 8-1567, and amendments thereto.

(3) Except as provided further, the provisions of this subsection shall apply to all violations committed on or after July 1, 2006. The provisions of subsection (d)(2) shall not apply to violations committed on or after July 1, 2014, but prior to July 1, 2015.

(e) Except as provided in subsection (b), there shall be no
expungement of convictions for the following offenses or of convictions
for an attempt to commit any of the following offenses:
(1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.
2018 Supp. 21-5503, and amendments thereto;
(2) indecent liberties with a child or aggravated indecent liberties
with a child, as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal,
or K.S.A. 2018 Supp. 21-5506, and amendments thereto;
(3) criminal sodomy, as defined in K.S.A. 21-3505(a)(2) or (a)(3),
prior to its repeal, or K.S.A. 2018 Supp. 21-5504(a)(3) or (a)(4), and
amendments thereto;
(4) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior
to its repeal, or K.S.A. 2018 Supp. 21-5504, and amendments thereto;
(5) indecent solicitation of a child or aggravated indecent solicitation
of a child, as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal,
or K.S.A. 2018 Supp. 21-5508, and amendments thereto;
(6) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior
to its repeal, or K.S.A. 2018 Supp. 21-5510, and amendments thereto;
(7) internet trading in child pornography or aggravated internet
trading in child pornography, as defined in K.S.A. 2018 Supp. 21-5514,
and amendments thereto;
(8) aggravated incest, as defined in K.S.A. 21-3603, prior to its
repeal, or K.S.A. 2018 Supp. 21-5604, and amendments thereto;
(9) endangering a child or aggravated endangering a child, as defined
in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2018 Supp.
21-5601, and amendments thereto;
(10) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal,
or K.S.A. 2018 Supp. 21-5602, and amendments thereto;
(11) capital murder, as defined in K.S.A. 21-3439, prior to its repeal,
or K.S.A. 2018 Supp. 21-5401, and amendments thereto;
(12) murder in the first degree, as defined in K.S.A. 21-3401, prior to
its repeal, or K.S.A. 2018 Supp. 21-5402, and amendments thereto;
(13) murder in the second degree, as defined in K.S.A. 21-3402, prior
to its repeal, or K.S.A. 2018 Supp. 21-5403, and amendments thereto;
(14) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to
its repeal, or K.S.A. 2018 Supp. 21-5404, and amendments thereto;
(15) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to
its repeal, or K.S.A. 2018 Supp. 21-5405, and amendments thereto;
(16) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal,
or K.S.A. 2018 Supp. 21-5505, and amendments thereto, when the victim
was less than 18 years of age at the time the crime was committed;
(17) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to
its repeal, or K.S.A. 2018 Supp. 21-5505, and amendments thereto;
(18) a violation of K.S.A. 8-2,144, and amendments thereto,
including any diversion for such violation; or

(19) any conviction for any offense in effect at any time prior to July 1, 2011, that is comparable to any offense as provided in this subsection.

(f) Notwithstanding any other law to the contrary, for any offender who is required to register as provided in the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no expungement of any conviction or any part of the offender's criminal record while the offender is required to register as provided in the Kansas offender registration act except as provided in subsection (h)(2).

(g) (1) When a petition for expungement is filed, the court shall set a date for a hearing of such petition and shall cause notice of such hearing to be given to the prosecutor and the arresting law enforcement agency. The petition shall state the:

(A) Defendant's full name;

(B) full name of the defendant at the time of arrest, conviction or diversion, if different than the defendant's current name;

(C) defendant's sex, race and date of birth;

(D) crime for which the defendant was arrested, convicted or diverted;

(E) date of the defendant's arrest, conviction or diversion; and

(F) identity of the convicting court, arresting law enforcement authority or diverting authority.

(2) Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of $176. On and after July 1, 2017, through June 30, 2019, the supreme court may impose a charge, not to exceed $19 per case, to fund the costs of non-judicial personnel. The charge established in this section shall be the only fee collected or moneys in the nature of a fee collected for the case. Such charge shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee.

(3) All petitions for expungement shall be docketed in the original criminal action. 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 and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the prisoner review board.

(h) (1) At the hearing on the petition for expungement pursuant to subsection (a), (c) or (d), the court shall order the petitioner's arrest record, conviction or diversion expunged if the court finds that:

(A) the petitioner has 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 the petitioner;

(B) the circumstances and behavior of the petitioner warrant the
expungement; and

\[ f31 (C) \] the expungement is consistent with the public welfare.

(2) (A) At the hearing on the petition for expungement pursuant to subsection (b), the court shall order the petitioner's arrest record, conviction or diversion expunged if:

(i) The court finds that the petitioner is a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child; and

(ii) the petitioner can prove by a preponderance of the evidence that they were acting under coercion caused by the act of another at the time of the offense.

(B) (i) A finding by the court that the petitioner was a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child at the time of the offense shall be prima facie evidence of coercion.

(ii) As used in this subsection, "coercion" means: Causing or threatening to cause injury to any person; physically restraining or threatening to physically restrain another person; abusing or threatening to abuse the law or legal process; threatening to withhold food, lodging or clothing; threatening to or destroying, concealing, removing, confiscating or possessing any actual or purported government identification document of another person; or any other scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in bodily harm or physical restraint against any person.

(C) Official documentation of a petitioner's status as a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child at the time of the offense shall create a rebuttable presumption that the petitioner was a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child at the time of the offense. Official documentation shall not be required to obtain relief under this subsection. As used in this subsection, "official documentation" means:

(i) A copy of an official record, certification or eligibility letter from a federal, state, tribal or local proceeding, including an approval notice or an enforcement certification generated from a federal immigration proceeding, that shows that the petitioner was a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child; or

(ii) an affidavit or sworn testimony from a member of the clergy, a medical professional, a trained professional staff member of a victim services organization, or other professional from whom the petitioner has sought legal counsel or other assistance in addressing the trauma and other challenges associated with being a victim of human trafficking,
aggravated human trafficking or commercial sexual exploitation of a child.

(D) In considering whether the petitioner is a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child, the court may consider any other evidence the court determines is of sufficient credibility and probative value, including an affidavit or sworn testimony. Such evidence may include, but is not limited to:

(i) Branding or other tattoos on the petitioner that identified the juvenile as having a trafficker;

(ii) testimony, police interview notes, police reports or affidavits from those with firsthand knowledge of the petitioner’s involvement in the trafficking or exploitation, such as solicitors of commercial sex, family members, hotel workers and other individuals trafficked or exploited by the same individual or group of individuals who trafficked or exploited the petitioner;

(iii) financial records showing profits from the trafficking or exploitation, such as records of hotel stays, employment at indoor venues such as massage parlors, bottle clubs or strip clubs, or employment at an escort service;

(iv) internet listings, print advertisements or business cards used to promote the petitioner for trafficking or exploitation; or

(v) email, text or voicemail records between the petitioner, the trafficker or solicitors of sex that reveal aspects of the trafficking or exploitation, such as behavior patterns, meeting times, payments or examples of the trafficker exerting coercion over the petitioner.

(i) When the court has ordered an arrest record, conviction or diversion expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest, conviction or diversion. If the case was appealed from municipal court, the clerk of the district court shall send a certified copy of the order of expungement to the municipal court. The municipal court shall order the case expunged once the certified copy of the order of expungement is received. After the order of expungement is entered, the petitioner shall be treated as not having been arrested, convicted or diverted of the crime, except that:

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

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

(A) In any application for licensure as a private detective, private
detective agency, certification as a firearms trainer pursuant to K.S.A. 2018 Supp. 75-7b21, and amendments thereto, or employment as a
detective with a private detective agency, as defined by K.S.A. 75-7b01,
and amendments thereto; as security personnel with a private patrol
operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with
an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of
the Kansas department for aging and disability services;

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

(C) to aid in determining the petitioner's 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;

(D) to aid in determining the petitioner's qualifications for executive
director of the Kansas racing and gaming commission, for employment
with the commission or for work in sensitive areas in parimutuel racing as
deemed appropriate by the executive director of the commission, or to aid
in determining qualifications for licensure or renewal of licensure by the
commission;

(E) to aid in determining the petitioner's qualifications for the
following under the Kansas expanded lottery act: (i) Lottery gaming
facility manager or prospective manager, racetrack gaming facility
manager or prospective manager, licensee or certificate holder; or (ii) an
officer, director, employee, owner, agent or contractor thereof;

(F) upon application for a commercial driver's license under K.S.A.
8-2,125 through 8-2,142, and amendments thereto;

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

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

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

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

(K) for applications received on and after July 1, 2006, to aid in
determining the petitioner's qualifications for a license to carry a concealed
weapon pursuant to the personal and family protection act, K.S.A. 2018
Supp. 75-7c01 et seq., and amendments thereto; or

(L) for applications received on and after July 1, 2017, to aid in
determining the petitioner's qualifications for a license to act as a bail
enforcement agent pursuant to K.S.A. 2018 Supp. 75-7e01 through 75-
7e09 and K.S.A. 2018 Supp. 50-6,141, and amendments thereto;
(3) the court, in the order of expungement, may specify other
circumstances under which the conviction is to be disclosed;
(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; and
(5) upon commitment to the custody of the secretary of corrections,
y any previously expunged record in the possession of the secretary of
corrections may be reinstated and the expungement disregarded, and the
record continued for the purpose of the new commitment.
(1) Whenever a person is convicted of a crime, pleads guilty and pays
a fine for a crime, is placed on parole, postrelease supervision or
probation, is assigned to a community correctional services program, is
granted a suspended sentence or is released on conditional release, 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.
(2) Notwithstanding the provisions of subsection (k)(l), and except as
provided in K.S.A. 2018 Supp. 21-6304(a)(3)(A), and amendments
thereto, the expungement of a prior felony conviction does not relieve the
individual of complying with any state or federal law relating to the use,
shipment, transportation, receipt or possession of firearms by persons
previously convicted of a felony.
(1) Whenever the record of any arrest, conviction or diversion has
been expunged under the provisions of this section or under the provisions
of any other 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 private detective agency or a private patrol operator, 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 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 Kansas 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 prosecutor, 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
desigee of the commission, and the request is accompanied by a
statement that the request is being made to aid in determining qualifications 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: (A) Lottery gaming facility
managers and prospective managers, racetrack gaming facility managers
and prospective managers, licensees and certificate holders; and (B) their
officers, directors, employees, owners, agents and contractors;
(11) the Kansas sentencing commission;
(12) the state gaming agency, and the request is accompanied by a
statement that the request is being made to aid in determining
qualifications: (A) To be an employee of the state gaming agency; or (B)
to be an employee of a tribal gaming commission or to hold a license
issued pursuant to a tribal-gaming compact;
(13) 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;

14) 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 as a law enforcement officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto;

15) 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 as defined by K.S.A. 22-2202, and amendments thereto;

16) 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:

(A) Carry a concealed weapon pursuant to the personal and family protection act; or

(B) act as a bail enforcement agent pursuant to K.S.A. 2018 Supp. 18 75-7e01 through 75-7e09 and K.S.A. 2018 Supp. 50-6,141, and amendments thereto; or

17) the Kansas bureau of investigation for the purposes of:

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

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

(m) The provisions of subsection (1)(17) shall apply to records created prior to, on and after July 1, 2011.

Sec. 3. K.S.A. 2018 Supp. 22-4902 is hereby amended to read as follows: 22-4902. As used in the Kansas offender registration act, unless the context otherwise requires:

(a) "Offender" means:

(1) A sex offender;

(2) a violent offender;

(3) a drug offender;

(4) any person who has been required to register under out-of-state law or is otherwise required to be registered; and

(5) any person required by court order to register for an offense not otherwise required as provided in the Kansas offender registration act.

(b) "Sex offender" includes any person who:

(1) On or after April 14, 1994, is convicted of any sexually violent crime;

(2) on or after July 1, 2002, is adjudicated as a juvenile offender for
an act which if committed by an adult would constitute the commission of a sexually violent crime, unless the court, on the record, finds that the act involved non-forcible sexual conduct, the victim was at least 14 years of age and the offender was not more than four years older than the victim;

(3) has been determined to be a sexually violent predator; 

(4) on or after July 1, 1997, is convicted of any of the following crimes when one of the parties involved is less than 18 years of age:

(A) Adultery, as defined in K.S.A. 21-3507, prior to its repeal, or K.S.A. 2018 Supp. 21-5511, and amendments thereto;

(B) criminal sodomy, as defined in K.S.A. 21-3505(a)(1), prior to its repeal, or K.S.A. 2018 Supp. 21-5504(a)(1) or (a)(2), and amendments thereto;

(C) promoting prostitution, as defined in K.S.A. 21-3513, prior to its repeal, or K.S.A. 2018 Supp. 21-6420, prior to its amendment by section 17 of chapter 120 of the 2013 Session Laws of Kansas on July 1, 2013;

(D) patronizing a prostitute, as defined in K.S.A. 21-3515, prior to its repeal, or K.S.A. 2018 Supp. 21-6421, prior to its amendment by section 18 of chapter 120 of the 2013 Session Laws of Kansas on July 1, 2013; or

(E) lewd and lascivious behavior, as defined in K.S.A. 21-3508, prior to its repeal, or K.S.A. 2018 Supp. 21-5513, and amendments thereto;

(5) is convicted of sexual battery, as defined in K.S.A. 21-3517, prior to its repeal, or K.S.A. 2018 Supp. 21-5505(a), and amendments thereto;

(6) is convicted of an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2018 Supp. 21-5301, 21-5302, 21-5303, and amendments thereto, of an offense defined in this subsection; or

(7) has been convicted of an offense that is comparable to any crime defined in this subsection, or any out-of-state conviction for an offense that under the laws of this state would be an offense defined in this subsection.

"Sexually violent crime" means:

(1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2018 Supp. 21-5503, and amendments thereto;

(2) indecent liberties with a child, as defined in K.S.A. 21-3503, prior to its repeal, or K.S.A. 2018 Supp. 21-5506(a), and amendments thereto;

(3) aggravated indecent liberties with a child, as defined in K.S.A. 21-3504, prior to its repeal, or K.S.A. 2018 Supp. 21-5506(b), and amendments thereto;

(4) criminal sodomy, as defined in K.S.A. 21-3505(a)(2) or (a)(3), prior to its repeal, or K.S.A. 2018 Supp. 21-5504(a)(3) or (a)(4), and amendments thereto;

(5) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior to its repeal, or K.S.A. 2018 Supp. 21-5504(b), and amendments thereto;

(6) indecent solicitation of a child, as defined in K.S.A. 21-3510,
prior to its repeal, or K.S.A. 2018 Supp. 21-5508(a), and amendments thereto;
(7) aggravated indecent solicitation of a child, as defined in K.S.A. 21-3511, prior to its repeal, or K.S.A. 2018 Supp. 21-5508(b), and amendments thereto;
(8) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2018 Supp. 21-5510, and amendments thereto;
(9) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to its repeal, or K.S.A. 2018 Supp. 21-5505(b), and amendments thereto;
(10) aggravated incest, as defined in K.S.A. 21-3603, prior to its repeal, or K.S.A. 2018 Supp. 21-5604(b), and amendments thereto;
(11) electronic solicitation, as defined in K.S.A. 21-3523, prior to its repeal, and K.S.A. 2018 Supp. 21-5509, and amendments thereto;
(12) unlawful sexual relations, as defined in K.S.A. 21-3520, prior to its repeal, or K.S.A. 2018 Supp. 21-5512, and amendments thereto;
(13) aggravated human trafficking, as defined in K.S.A. 21-3447, prior to its repeal, or K.S.A. 2018 Supp. 21-5426(b), and amendments thereto, if committed in whole or in part for the purpose of the sexual gratification of the defendant or another;
(14) commercial sexual exploitation of a child, as defined in K.S.A. 2018 Supp. 21-6422, and amendments thereto;
(15) promoting the sale of sexual relations, as defined in K.S.A. 2018 Supp. 21-6420, and amendments thereto;
(16) any conviction or adjudication for an offense that is comparable to a sexually violent crime as defined in this subsection, or any out-of-state conviction or adjudication for an offense that under the laws of this state would be a sexually violent crime as defined in this subsection;
(17) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2018 Supp. 21-5301, 21-5302, 21-5303, and amendments thereto, of a sexually violent crime, as defined in this subsection; or
(18) any act which has been determined beyond a reasonable doubt to have been sexually motivated, unless the court, on the record, finds that the act involved non-forcible sexual conduct, the victim was at least 14 years of age and the offender was not more than four years older than the victim. As used in this paragraph, "sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.
(d) "Sexually violent predator" means any person who, on or after July 1, 2001, is found to be a sexually violent predator pursuant to K.S.A. 59-29a01 et seq., and amendments thereto.
(e) "Violent offender" includes any person who:
(1) On or after July 1, 1997, is convicted of any of the following
crimes:

(A) Capital murder, as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 2018 Supp. 21-5401, and amendments thereto;

(B) Murder in the first degree, as defined in K.S.A. 21-3401, prior to its repeal, or K.S.A. 2018 Supp. 21-5402, and amendments thereto;

(C) Murder in the second degree, as defined in K.S.A. 21-3402, prior to its repeal, or K.S.A. 2018 Supp. 21-5403, and amendments thereto;

(D) Voluntary manslaughter, as defined in K.S.A. 21-3403, prior to its repeal, or K.S.A. 2018 Supp. 21-5404, and amendments thereto;

(E) Involuntary manslaughter, as defined in K.S.A. 21-3404, prior to its repeal, or K.S.A. 2018 Supp. 21-5405(a)(1), (a)(2) or (a)(4), and amendments thereto. The provisions of this paragraph shall not apply to violations of K.S.A. 2018 Supp. 21-5405(a)(3), and amendments thereto, which occurred on or after July 1, 2011, through July 1, 2013;

(F) Kidnapping, as defined in K.S.A. 21-3420, prior to its repeal, or K.S.A. 2018 Supp. 21-5408(a), and amendments thereto;

(G) Aggravated kidnapping, as defined in K.S.A. 21-3421, prior to its repeal, or K.S.A. 2018 Supp. 21-5408(b), and amendments thereto;

(H) Criminal restraint, as defined in K.S.A. 21-3424, prior to its repeal, or K.S.A. 2018 Supp. 21-5411, and amendments thereto, except by a parent, and only when the victim is less than 18 years of age; or

(I) Aggravated human trafficking, as defined in K.S.A. 21-3447, prior to its repeal, or K.S.A. 2018 Supp. 21-5426(b), and amendments thereto, if not committed in whole or in part for the purpose of the sexual gratification of the defendant or another;

(2) On or after July 1, 2006, is convicted of any person felony and the court makes a finding on the record that a deadly weapon was used in the commission of such person felony;

(3) Has been convicted of an offense that is comparable to any crime defined in this subsection, any out-of-state conviction for an offense that under the laws of this state would be an offense defined in this subsection;

(4) Is convicted of an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2018 Supp. 21-5301, 21-5302 and 21-5303, and amendments thereto, of an offense defined in this subsection.

(f) "Drug offender" includes any person who, on or after July 1, 2007:

(1) Is convicted of any of the following crimes:

(A) Unlawful manufacture or attempting such of any controlled substance or controlled substance analog, as defined in K.S.A. 65-4159, prior to its repeal, K.S.A. 2010 Supp. 21-36a03, prior to its transfer, or K.S.A. 2018 Supp. 21-5703, and amendments thereto;

(B) Possession of ephedrine, pseudoephedrine, red phosphorus,
lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers with intent to use the product to manufacture a controlled substance, as defined in K.S.A. 65-7006(a), prior to its repeal, K.S.A. 2010 Supp. 21-36a09(a), prior to its transfer, or K.S.A. 2018 Supp. 21-5709(a), and amendments thereto;

(C) K.S.A. 65-4161, prior to its repeal, K.S.A. 2010 Supp. 21-36a05(a)(l), prior to its transfer, or K.S.A. 2018 Supp. 21-5705(a)(l), and amendments thereto. The provisions of this paragraph shall not apply to violations of K.S.A. 2010 Supp. 21-36a05(a)(2) through (a)(6) or (b) which occurred on or after July 1, 2009, through April 15, 2010;

(2) has been convicted of an offense that is comparable to any crime defined in this subsection, any out-of-state conviction for an offense that under the laws of this state would be an offense defined in this subsection; or

(3) is or has been convicted of an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2018 Supp. 21-5301, 21-5302 and 21-5303, and amendments thereto, of an offense defined in this subsection.

(g) Convictions or adjudications which result from or are connected with the same act, or result from crimes committed at the same time, shall be counted for the purpose of this section as one conviction or adjudication. Any conviction or adjudication set aside pursuant to law is not a conviction or adjudication for purposes of this section. A conviction or adjudication from any out-of-state court shall constitute a conviction or adjudication for purposes of this section.

(h) "School" means any public or private educational institution, including, but not limited to, postsecondary school, college, university, community college, secondary school, high school, junior high school, middle school, elementary school, trade school, vocational school or professional school providing training or education to an offender for three or more consecutive days or parts of days, or for 10 or more nonconsecutive days in a period of 30 consecutive days.

(i) "Employment" means any full-time, part-time, transient, day-labor employment or volunteer work, with or without compensation, for three or more consecutive days or parts of days, or for 10 or more nonconsecutive days in a period of 30 consecutive days.

(j) "Reside" means to stay, sleep or maintain with regularity or temporarily one's person and property in a particular place other than a location where the offender is incarcerated. It shall be presumed that an offender resides at any and all locations where the offender stays, sleeps or maintains the offender's person for three or more consecutive days or parts of days, or for ten or more nonconsecutive days in a period of 30 consecutive days.
consecutive days.

(k) "Residence" means a particular and definable place where an individual resides. Nothing in the Kansas offender registration act shall be construed to state that an offender may only have one residence for the purpose of such act.

(l) "Transient" means having no fixed or identifiable residence.

(m) "Law enforcement agency having initial jurisdiction" means the registering law enforcement agency of the county or location of jurisdiction where the offender expects to most often reside upon the offender's discharge, parole or release.

(n) "Registering law enforcement agency" means the sheriff's office or tribal police department responsible for registering an offender.

(o) "Registering entity" means any person, agency or other governmental unit, correctional facility or registering law enforcement agency responsible for obtaining the required information from, and explaining the required registration procedures to, any person required to register pursuant to the Kansas offender registration act. "Registering entity" shall include, but not be limited to, sheriff's offices, tribal police departments and correctional facilities.

(p) "Treatment facility" means any public or private facility or institution providing inpatient mental health, drug or alcohol treatment or counseling, but does not include a hospital, as defined in K.S.A. 65-425, and amendments thereto.

(q) "Correctional facility" means any public or private correctional facility, juvenile detention facility, prison or jail.

(r) "Out-of-state" means: the District of Columbia; any federal, military or tribal jurisdiction, including those within this state; any foreign jurisdiction; or any state or territory within the United States, other than this state.

(s) "Duration of registration" means the length of time during which an offender is required to register for a specified offense or violation.

(t) (1) Notwithstanding any other provision of this section, "offender" shall not include any person who is:

(A) Convicted of unlawful transmission of a visual depiction of a child, as defined in K.S.A. 2018 Supp. 21-5611(a), and amendments thereto, aggravated unlawful transmission of a visual depiction of a child, as defined in K.S.A. 2018 Supp. 21-5611(b), and amendments thereto, or unlawful possession of a visual depiction of a child, as defined in K.S.A. 2018 Supp. 21-5610, and amendments thereto; or

(B) adjudicated as a juvenile offender for an act which if committed by an adult would constitute the commission of a crime defined in subsection (t)(1)(A).

(2) Notwithstanding any other provision of law, a court shall not
order any person to register under the Kansas offender registration act for
the offenses described in subsection (t)(l).

(a) Notwithstanding any other provision of this section, a court shall
not order any person to register under the Kansas offender registration act
if such person is convicted of any crime or adjudicated as a juvenile
offender for any offense and the court, on the record, finds that:

(1) The person was less than 18 years of age at the time of the act;

(2) the person was a victim of human trafficking, as defined in K.S.A.
21-3446, prior to its repeal, or K.S.A. 2018 Supp. 21-5426(a), and
amendments thereto, aggravated human trafficking, as defined in K.S.A.
21-3447, prior to its repeal, or K.S.A. 2018 Supp. 21-5426(b), and
amendments thereto, or commercial sexual exploitation of a child, as
defined in K.S.A. 2018 Supp. 21-6422, and amendments thereto, at the
time of the act; and

(3) the trafficker or trafficking ring used force, fraud or coercion, as
defined in K.S.A. 2018 Supp. 21-6614 or 38-2312, and amendments
thereto, to influence the person to commit the act.

Sec. 4. K.S.A. 2018 Supp. 22-4908 is hereby amended to read as
follows: 22-4908. (a) Except as provided in subsection (b), no person
required to register as an offender pursuant to the Kansas offender
registration act shall be granted an order relieving the offender of further
registration under this act. This section shall include any person with any
out-of-state conviction or adjudication for an offense that would require
registration under the laws of this state.

(b) A person required to register as an offender pursuant to the
Kansas offender registration act shall be granted an order relieving the
offender of further registration under this act if a court orders the offense
requiring registration expunged based on a finding pursuant to K.S.A.
2018 Supp. 21-6614(h)(2) or 38-2312(e)(2), and amendments thereto, that
the person committed the offense as a result of being a victim of human
trafficking, aggravated human trafficking or commercial sexual
exploitation of a child.

Sec. 5. K.S.A. 2018 Supp. 38-2312 is hereby amended to read as
follows: 38-2312. (a) (1) Except as provided in subsections (b) and (c),
any records or files specified in this code concerning a juvenile may be
expunged upon application to a judge of the court of the county in which
the records or files are maintained.

(2) Any records or files specified in this code concerning a juvenile
may be expunged upon application to a judge of the court of the county in
which the records or files are maintained if such application alleges that
the juvenile: (A) Is a victim of human trafficking, aggravated human
trafficking or commercial sexual exploitation of a child; and (B) was
acting under coercion caused by the act of another at the time of the
offense for which the juvenile was adjudicated

(3) The application for expungement may be made by the juvenile, if
18 years of age or older or, if the juvenile is less than 18 years of age, by
the juvenile's parent or next friend.

(b) Except as provided in subsection (e)(2), there shall be no
expungement of records or files concerning acts committed by a juvenile
which, if committed by an adult, would constitute a violation of K.S.A. 21-
3401, prior to its repeal, or K.S.A. 2018 Supp. 21-5402, and amendments
thereto, murder in the first degree; K.S.A. 21-3402, prior to its repeal, or
K.S.A. 2018 Supp. 21-5403, and amendments thereto, murder in the
second degree; K.S.A. 21-3403, prior to its repeal, or K.S.A. 2018 Supp.
21-5404, and amendments thereto, voluntary manslaughter; K.S.A. 21-
3404, prior to its repeal, or K.S.A. 2018 Supp. 21-5405, and amendments
thereto, involuntary manslaughter; K.S.A. 21-3439, prior to its repeal, or
K.S.A. 2018 Supp. 21-5401, and amendments thereto, capital murder;
K.S.A. 21-3442, prior to its repeal, or K.S.A. 2018 Supp. 21-5405(a)(3) or
(a)(5), and amendments thereto, involuntary manslaughter while driving
under the influence of alcohol or drugs; K.S.A. 21-3502, prior to its repeal,
or K.S.A. 2018 Supp. 21-5503, and amendments thereto, rape; K.S.A. 21-
3503, prior to its repeal, or K.S.A. 2018 Supp. 21-5506(a), and
amendments thereto, indecent liberties with a child; K.S.A. 21-3504, prior
to its repeal, or K.S.A. 2018 Supp. 21-5506(b), and amendments thereto,
aggravated indecent liberties with a child; K.S.A. 21-3506, prior to its
repeal, or K.S.A. 2018 Supp. 21-5506(b), and amendments thereto,
aggravated criminal sodomy; K.S.A. 21-3510, prior to its repeal, or K.S.A.
2018 Supp. 21-5508(a), and amendments thereto, indecent solicitation of a
child; K.S.A. 21-3511, prior to its repeal, or K.S.A. 2018 Supp. 21-
5508(b), and amendments thereto, aggravated indecent solicitation of a
child; K.S.A. 21-3516, prior to its repeal, or K.S.A. 2018 Supp. 21-5510,
and amendments thereto, sexual exploitation of a child; K.S.A. 2018 Supp.
21-5514(a), and amendments thereto, internet trading in child
pornography; K.S.A. 2018 Supp. 21-5514(b), and amendments thereto,
aggravated internet trading in child pornography; K.S.A. 21-3603, prior to
its repeal, or K.S.A. 2018 Supp. 21-5604(b), and amendments thereto,
aggravated incest; K.S.A. 21-3608, prior to its repeal, or K.S.A. 2018
Supp. 21-5601(a), and amendments thereto, endangering a child; K.S.A.
21-3609, prior to its repeal, or K.S.A. 2018 Supp. 21-5602, and
amendments thereto, abuse of a child; or which would constitute an
attempt to commit a violation of any of the offenses specified in this
subsection.

(c) Notwithstanding any other law to the contrary, for any offender
who is required to register as provided in the Kansas offender registration
act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no
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expungement of any conviction or any part of the offender's criminal record while the offender is required to register as provided in the Kansas offender registration act except as provided in subsection (e)(2).

(d) When a petition for expungement is filed, the court shall set a date for a hearing on the petition and shall give notice thereof to the county or district attorney. The petition shall state: (1) The juvenile's full name; (2) the full name of the juvenile as reflected in the court record, if different than (1); (3) the juvenile's sex and date of birth; (4) the offense for which the juvenile was adjudicated; (5) the date of the trial; and (6) the identity of the trial court. Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of $176.

On and after July 1, 2017, through June 30, 2019, the supreme court may impose a charge, not to exceed $19 per case, to fund the costs of non-judicial personnel. All petitions for expungement shall be docketed in the original action. 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.

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

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

(ii) one year has elapsed since the final discharge for an adjudication concerning acts committed by a juvenile which, if committed by an adult, would constitute a violation of K.S.A. 2018 Supp. 21-6419, and amendments thereto

(iii) the juvenile is a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child, the adjudication concerned acts committed by the juvenile as a result of such victimization, including, but not limited to, acts which, if committed by an adult, would constitute a violation of K.S.A. 2018 Supp. 21 6203 or 21 6419, and amendments thereto, and the hearing on expungement occurred on or after the date of final discharge. The provisions of this clause shall not allow an expungement of records or files concerning acts described in subsection: (b);

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

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

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

(i) The juvenile is a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child;

(ii) the juvenile was acting under coercion caused by the act of another at the time of the offense for which the juvenile was adjudicated, including, but not limited to, acts which, if committed by an adult, would constitute a violation of K.S.A. 2018 Supp. 21-6203 or 21-6419, and amendments thereto; and

(iii) the hearing on expungement occurred at any time on or after the date of adjudication.

(B) (i) A finding by the court that the juvenile was a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child at the time of the offense shall be prima facie evidence of coercion.

(ii) As used in this subsection, "coercion" means: Causing or threatening to cause injury to any person; physically restraining or threatening to physically restrain another person; abusing or threatening to abuse the law or legal process; threatening to withhold food, lodging or clothing; threatening to or destroying, concealing, removing, confiscating or possessing any actual or purported government identification document of another person; or any other scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in bodily harm or physical restraint against any person.

(C) Official documentation of a juvenile's status as a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child at the time of the offense shall create a rebuttable presumption that the juvenile was a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child at the time of the offense. Official documentation shall not be required to obtain relief under this subsection. As used in this subsection, "official documentation" means:

(i) A copy of an official record, certification or eligibility letter from a federal, state, tribal or local proceeding, including an approval notice or an enforcement certification generated from a federal immigration proceeding, that shows that the juvenile was a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child; or

(ii) an affidavit or sworn testimony from a member of the clergy, a medical professional, a trained professional staff member of a victim services organization, or other professional from whom the juvenile has sought legal counsel or other assistance in addressing the trauma and other challenges associated with being a victim of human trafficking,
aggravated human trafficking or commercial sexual exploitation of a child

(D) In considering whether the juvenile is a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child, the court may consider any other evidence the court determines is of sufficient credibility and probative value, including an affidavit or sworn testimony. Such evidence may include, but is not limited to:

(i) Branding or other tattoos on the juvenile that identified the juvenile as having a trafficker;

(ii) testimony, police interview notes, police reports or affidavits from those with firsthand knowledge of the juvenile’s involvement in the trafficking or exploitation, such as solicitors of commercial sex, family members, hotel workers and other individuals trafficked or exploited by the same individual or group of individuals who trafficked or exploited the juvenile;

(iii) financial records showing profits from the trafficking or exploitation, such as records of hotel stays, employment at indoor venues such as massage parlors, bottle clubs or strip clubs, or employment at an escort service;

(iv) internet listings, print advertisements or business cards used to promote the juvenile for trafficking or exploitation; or

(v) email, text or voicemail records between the juvenile, the trafficker or solicitors of sex that reveal aspects of the trafficking or exploitation, such as behavior patterns, meeting times, payments or examples of the trafficker exerting coercion over the juvenile.

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

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

(g) A certified copy of any order made pursuant to subsection (a) or (d) shall be sent to the Kansas bureau of investigation, which shall notify every juvenile or criminal justice agency which may possess records or files ordered to be expunged. If the agency fails to comply with the order
within a reasonable time after its receipt, such agency may be adjudged in
contempt of court and punished accordingly.

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

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

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

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

(1) The person whose record was expunged;
(2) a private detective agency or a private patrol operator, 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 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 Kansas 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) 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;
(7) the governor or the Kansas racing 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;
(8) the Kansas sentencing commission; or
(9) the Kansas bureau of investigation, for the purposes of:
(A) Completing a person's criminal history record information within the central repository in accordance with K.S.A. 22-4701 et seq., and amendments thereto; or

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

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

Sec. 6. K.S.A. 2018 Supp. 21-5206, 21-6614, 22-4902, 22-4908 and 38-2312 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.
AN ACT concerning crimes, punishment and criminal procedure; relating to victims of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child; petition to set aside certain conviction or diversion agreements and related arrest records.

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

Section 1. (a) This section shall apply to a person:

(1) Convicted of any offense if the person alleges that the conviction concerned acts committed by the person as a result of being a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child, including, but not limited to:

(A) Prostitution, as defined in K.S.A. 21-3512, prior to its repeal, or selling sexual relations, as defined in K.S.A. 2018 Supp. 21-6419, and amendments thereto;

(B) Promoting prostitution, as defined in K.S.A. 21-3513, prior to its repeal, or promoting the sale of sexual relations, as defined in K.S.A. 2018 Supp. 21-6420, and amendments thereto;

(C) Patronizing a prostitute, as defined in K.S.A. 21-3515, prior to its repeal, or buying sexual relations, as defined in K.S.A. 2018 Supp. 21-6421, and amendments thereto;

(D) Human trafficking or aggravated human trafficking, as defined in K.S.A. 21-3446 or 21-3447, prior to their repeal, or K.S.A. 2018 Supp. 21-5426, and amendments thereto; or

(E) Commercial sexual exploitation of a child, as defined in K.S.A. 2018 Supp. 21-6422, and amendments thereto;

(2) Convicted of attempt, conspiracy, criminal solicitation, being an accessory to, aiding and abetting, aiding the consummation of or compounding a felony with any of the offenses described in this subsection as the underlying offense; or

(3) Who entered into a diversion agreement in lieu of further criminal proceedings for any violation described in this subsection.

(b) A person described in subsection (a) may petition the convicting court to set aside the conviction or diversion agreement described in subsection (a) and related arrest records at any time.

(c) (1) When a petition is filed pursuant to this section, the court shall set a date for a hearing on the petition and shall give notice of such hearing
to the prosecutor and the arresting law enforcement agency. The petition shall state the:

(A) Defendant's full name;
(B) full name of the defendant at the time of arrest, conviction or diversion, if different than the defendant's current name;
(C) defendant's sex, race and date of birth;
(D) crime for which the defendant was arrested, convicted or diverted;
(E) date of the defendant's arrest, conviction or diversion; and
(F) identity of the convicting court, arresting law enforcement authority or diverting authority; and
(G) the specific facts the defendant will rely on to support the claim that the defendant was a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child and was acting under coercion caused by the act of another.

(2) No surcharge or fee shall be imposed to any person filing a petition pursuant to this section.

(3) All petitions under this section shall be docketed as a new case in the same court as the original criminal action. 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 and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the prisoner review board.

(d) (1) At the hearing on the petition, the court shall grant such petition to set aside the petitioner's arrest record, conviction or diversion if:
(A) The court finds that the petitioner is a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child; and
(B) the petitioner can prove by a preponderance of the evidence that they were acting under coercion caused by the act of another at the time of the offense.

(2) (A) A finding by the court that the petitioner was a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child at the time of the offense shall be prima facie evidence of coercion.
(B) For purposes of this subsection, "coercion" means: Causing or threatening to cause injury to any person; physically restraining or threatening to physically restrain another person; abusing or threatening to abuse the law or legal process; threatening to withhold food, lodging or clothing; threatening to or destroying, concealing, removing, confiscating or possessing any actual or purported government identification document of another person; or any other scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in bodily harm
or physical restraint against any person.

(3) Official documentation of a petitioner's status as a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child at the time of the offense shall create a rebuttable presumption that the petitioner was a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child at the time of the offense. Official documentation shall not be required to obtain relief under this section. As used in this subsection, "official documentation" means:

(A) A copy of an official record, certification or eligibility letter from a federal, state, tribal or local proceeding, including an approval notice or an enforcement certification generated from a federal immigration proceeding, that shows that the petitioner was a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child; or

(B) an affidavit or sworn testimony from a member of the clergy, a medical professional, a trained professional staff member of a victim services organization, or other professional from whom the petitioner has sought legal counsel or other assistance in addressing the trauma and other challenges associated with being a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child.

(4) In considering whether the petitioner is a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child, the court may consider any other evidence the court determines is of sufficient credibility and probative value, including an affidavit or sworn testimony. Such evidence may include, but is not limited to:

(A) Branding or other tattoos on the petitioner that identified the petitioner as having a trafficker;

(B) testimony, police interview notes, police reports or affidavits from those with firsthand knowledge of the petitioner's involvement in the trafficking or exploitation, such as solicitors of commercial sex, family members, hotel workers and other individuals trafficked or exploited by the same individual or group of individuals who trafficked or exploited the petitioner;

(C) financial records showing profits from the trafficking or exploitation, such as records of hotel stays, employment at indoor venues such as massage parlors, bottle clubs or strip clubs, or employment at an escort service;

(D) internet listings, print advertisements or business cards used to promote the petitioner for trafficking or exploitation; or

(E) email, text or voicemail records between the petitioner, the trafficker or solicitors of sex that reveal aspects of the trafficking or
exploitation, such as behavior patterns, meeting times, payments or examples of the trafficker exerting coercion over the petitioner.

(e) Upon request of the petitioner, all hearings conducted pursuant to this section shall be conducted in camera, by two-way electronic audio-video communication between the petitioner and the judge in lieu of personal presence of the petitioner or the petitioner's attorney in the courtroom from any location, or both. In addition, upon the request of the petitioner, the court shall not disclose or open to public inspection any information identifying the victim or alleged victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child. Nothing in this subsection shall prohibit the victim or alleged victim from voluntarily disclosing such victim's identity. Information regarding the victim or alleged victim that is sealed pursuant to this subsection shall be disclosed only to the following:

1. A judge of the district court and members of the staff of the court designated by the judge;
2. parties to the proceedings and their attorneys;
3. with the consent of the victim or alleged victim, any individual or any public or private agency or institution providing educational, medical or mental health services to the victim or alleged victim;
4. law enforcement officers or county or district attorneys, or their staff, when necessary for the discharge of their official duties; and
5. any other person when authorized by a court order, subject to any conditions imposed by the order.

(f) An order setting aside a conviction or diversion agreement under this section shall:

1. Nullify the conviction or diversion agreement;
2. deem the conviction or diversion agreement to have been vacated due to a substantive defect in the underlying criminal proceedings; and
3. remove all civil disabilities and disqualifications imposed as a result of the conviction or diversion agreement.

(g) Upon entry of an order setting aside a conviction or diversion agreement under this section:

1. The court shall order the conviction or diversion agreement and related arrest records expunged and purged from all applicable state and federal systems pursuant to this subsection. The court shall enter the order regardless of whether the petitioner has prior criminal convictions;
2. the court shall direct the Kansas bureau of investigation to purge the conviction or diversion and arrest information from the criminal justice information system central repository and all applicable state and federal databases. The clerk of the court shall send a certified copy of the order to the Kansas bureau of investigation, which shall carry out the order and shall notify the federal bureau of investigation, the secretary of corrections
and any other criminal justice agency that may have a record of the
conviction or diversion and arrest. The Kansas bureau of investigation
shall provide confirmation of such action to the court; and
(3) the petitioner shall be treated as not having been arrested,
convicted or diverted for the crime.
(h) This section shall be part of and supplemental to the Kansas
criminal code.
Sec. 2. This act shall take effect and be in force from and after its
publication in the statute book.