

1 AN ACT relating to expungement.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 431.073 is amended to read as follows:

4 (1) Any person who has been:

5 (a) Convicted of a Class D felony violation of KRS 17.175, 186.990, 194A.505,
6 194B.505, 217.181, 217.207, 217.208, 218A.140, 218A.1415, 218A.1416,
7 218A.1417, 218A.1418, 218A.1423, 218A.1439, 218A.282, 218A.284,
8 218A.286, 218A.320, 218A.322, 218A.324, 218A.500, 244.165, 286.11-057,
9 304.47-025, 324.990, 365.241, 434.155, 434.675, 434.850, 434.872, 511.040,
10 512.020, 514.030, 514.040, 514.050, 514.060, 514.065, 514.070, 514.080,
11 514.090, 514.100, 514.110, 514.120, 514.140, 514.150, 514.160, 516.030,
12 516.060, 516.090, 516.108, 517.120, 518.040, 522.040, 524.100, 525.113,
13 526.020, 526.030, 528.020, 528.040, 528.050, 530.010, or 530.050;

14 (b) Convicted of a series of Class D felony violations of one (1) or more statutes
15 enumerated in paragraph (a) of this subsection arising from a single incident;

16 (c) Granted a full pardon; or

17 (d) Convicted of a Class D felony, or an offense prior to January 1, 1975 which
18 was punishable by not more than five (5) years' incarceration, which was not a
19 violation of KRS 189A.010, 508.032, or 519.055, abuse of public office, a sex
20 offense, or an offense committed against a child, and did not result in serious
21 bodily injury or death; or of a series of felony offenses eligible under this
22 paragraph;

23 may file with the court in which he or she was convicted an application to have the
24 judgment vacated. The application shall be filed as a motion in the original criminal
25 case. The person shall be informed of the right at the time of adjudication.

26 (2) (a) A verified application to have the judgment vacated under this section shall be
27 filed no sooner than five (5) years after the completion of the person's

1 sentence, or five (5) years after the successful completion of the person's
2 probation or parole, whichever occurs later.

3 (b) Upon the payment of the filing fee and the filing of the application, the Circuit
4 Court clerk shall serve a notice of filing upon the office of the
5 Commonwealth's attorney or county attorney that prosecuted the case and the
6 county attorney of the county where the judgment was entered. The office of
7 the Commonwealth's attorney or county attorney that prosecuted the case shall
8 file a response within sixty (60) days after being served with the notice of
9 filing. That time period may be extended for good cause, but the hearing on
10 the application to vacate the judgment shall occur no later than one hundred
11 twenty (120) days following the filing of the application. The inability to
12 determine the location of the crime victim shall constitute good cause for an
13 extension of time. No hearing upon the merits of the application shall be
14 scheduled until the Commonwealth's response has been filed, or if no
15 response is received, no later than one hundred twenty (120) days after the
16 filing of the application.

17 (c) In any case in which the Commonwealth objects that the application is grossly
18 incomplete, the court shall order the person or agency originating the
19 application to supplement the application.

20 (3) Upon the filing of the Commonwealth's response to an application, or if no response
21 is received, no later than one hundred twenty (120) days after the filing of the
22 application, the court shall set a date for a hearing and the Circuit Court clerk shall
23 notify the office of the Commonwealth's attorney or county attorney that prosecuted
24 the case. The office of the Commonwealth's attorney or county attorney that
25 prosecuted the case shall notify the victim of the crime, if there was an identified
26 victim. The Commonwealth's attorney or county attorney shall be authorized to
27 obtain without payment of any fee information from the Transportation Cabinet

1 regarding the crime victim's address on file regarding any vehicle operator's license
2 issued to that person.

3 (4) (a) In an application pursuant to subsection (1)(d) of this section, upon the filing
4 of the Commonwealth's response objecting to the vacating of a judgment and
5 expungement of a record, the court shall schedule a hearing within one
6 hundred twenty (120) days of the Commonwealth's response. The prosecutor
7 shall specify in the objection the reasons for believing a denial of the
8 application is justified. At the hearing at which the applicant or his or her
9 attorney must be present, the applicant must prove by clear and convincing
10 evidence that:

- 11 1. Vacating the judgment and expunging the record is consistent with the
12 welfare and safety of the public;
- 13 2. The action is supported by his or her behavior since the conviction or
14 convictions, as evidenced that he or she has been active in rehabilitative
15 activities in prison and is living a law-abiding life since release;
- 16 3. The vacation and expungement is warranted by the interests of justice;
17 and
- 18 4. Any other matter deemed appropriate or necessary by the court to make
19 a determination regarding the petition for expungement is met.

20 (b) At the hearing, the applicant may testify as to the specific adverse
21 consequences he or she may be subject to if the application is denied. The
22 court may hear testimony of witnesses and any other matter the court deems
23 proper and relevant to its determination regarding the application. The
24 Commonwealth may present proof of any extraordinary circumstances that
25 exist to deny the application. A victim of any offense listed in the application
26 shall have an opportunity to be heard at any hearing held under this section.

27 (c) If the court determines that circumstances warrant vacation and expungement

1 and that the harm otherwise resulting to the applicant clearly outweighs the
2 public interest in the criminal history record information being publicly
3 available, then the original conviction or convictions shall be vacated and the
4 records shall be expunged. The order of expungement shall not preclude a
5 prosecutor's office from retaining a nonpublic record for law enforcement
6 purposes only.

7 (5) The court may order the judgment vacated, and if the judgment is vacated the court
8 shall dismiss with prejudice any charges which are eligible for expungement under
9 subsection (1) of this section or KRS 431.076 or 431.078, and, upon full payment of
10 the fee in subsection (11) of this section, order expunged all records in the custody
11 of the court and any records in the custody of any other agency or official, including
12 law enforcement records, if the court finds that:

13 (a) The person had not, after June 27, 2019, had a felony conviction vacated and
14 the record expunged pursuant to this section;

15 (b) The person had not in the five (5) years prior to the filing of the application to
16 have the judgment vacated been convicted of a felony or a misdemeanor;

17 (c) No proceeding concerning a felony or misdemeanor is pending or being
18 instituted against the person; and

19 (d) For an application pursuant to subsection (1)(d) of this section, the person has
20 been rehabilitated and poses no significant threat of recidivism.

21 (6) If the court has received a response from the office of the Commonwealth's attorney
22 or county attorney that prosecuted the case stating no objection to the application to
23 have the judgment vacated, or if one hundred twenty (120) days have elapsed since
24 the filing of the application and no response has been received from the victim or
25 the office of the Commonwealth's attorney or county attorney that prosecuted the
26 case, the court may, without a hearing, vacate the judgment in the manner
27 established in subsection (5) of this section.

- 1 (7) Upon entry of an order vacating and expunging a conviction, the original conviction
2 shall be vacated and, upon full payment of the fee in subsection (11) of this section,
3 the record shall be expunged. The court and other agencies shall cause records to be
4 deleted or removed from their computer systems so that the matter shall not appear
5 on official state-performed background checks. The court and other agencies shall
6 reply to any inquiry that no record exists on the matter. The person whose record is
7 expunged shall not have to disclose the fact of the record or any matter relating
8 thereto on an application for employment, credit, or other type of application. If the
9 person is not prohibited from voting for any other reason, the person's ability to vote
10 shall be restored and the person may register to vote.
- 11 (8) An order vacating a conviction under this section shall not extend or revive an
12 expired statute of limitations, shall not constitute a finding of legal error regarding
13 the proceedings leading to or resulting in the conviction, shall not nullify any
14 findings of fact or conclusions of law made by the trial court or any appellate court
15 regarding the conviction, and shall not constitute a finding of innocence regarding
16 the conviction.
- 17 (9) The Administrative Office of the Courts shall establish a form application to be
18 used in filing an application to have judgment vacated and records expunged.
- 19 (10) The filing fee for an application to have judgment vacated and records expunged
20 shall be fifty dollars (\$50), which shall be deposited into a trust and agency account
21 for deputy clerks and shall not be refundable.
- 22 (11) (a) Upon the issuance of an order vacating and expunging a conviction pursuant
23 to this section, the applicant shall be charged an expungement fee of two
24 hundred fifty dollars (\$250), which may be payable by an installment plan in
25 accordance with KRS 534.020.
- 26 (b) When the order is issued, the court shall set a date, no sooner than eighteen
27 (18) months after the date of the order, by which the defendant must comply

1 with the installment payment plan. The applicant shall be given notice of the
2 total amount due, the payment frequency, and the date by which all payments
3 must be made. The notice shall state that the expungement cannot be
4 completed until full payment is received, and that if the applicant has not
5 completed the installment payment plan by the scheduled date, he or she shall
6 appear on that date to show good cause as to why he or she is unable to satisfy
7 the obligations. Notwithstanding provisions of KRS 534.020 to the contrary,
8 no applicant shall be ordered to jail for failure to complete an installment plan
9 ordered pursuant to this section.

10 (c) The revenues and interest from the expungement fee shall be deposited in the
11 expungement fund created in KRS 431.0795.

12 (12) *The court may waive all fees required by this section if the court finds that the*
13 *person is indigent.*

14 **(13)** This section shall be retroactive.

15 ➔Section 2. KRS 431.078 is amended to read as follows:

16 (1) Any person who has been convicted of:

17 (a) A misdemeanor, a violation, or a traffic infraction not otherwise classified as a
18 misdemeanor or violation, or a series of misdemeanors, violations, or traffic
19 infractions arising from a single incident; or

20 (b) A series of misdemeanors, violations, or traffic infractions not arising from a
21 single incident;

22 may petition the court in which he was convicted for expungement of his
23 misdemeanor or violation record within that judicial district, including a record of
24 any charges for misdemeanors, violations, or traffic infractions that were dismissed
25 or amended in the criminal action. The person shall be informed of the right at the
26 time of adjudication.

27 (2) Except as provided in KRS 218A.275(8) and 218A.276(8), the petition shall be

1 filed no sooner than five (5) years after the completion of the person's sentence or
2 five (5) years after the successful completion of the person's probation, whichever
3 occurs later.

4 (3) Upon the filing of a petition, the court shall set a date for a hearing, no sooner than
5 thirty (30) days after the filing of the petition, and shall notify the county attorney;
6 the victim of the crime, if there was an identified victim; and any other person
7 whom the person filing the petition has reason to believe may have relevant
8 information related to the expungement of the record. Inability to locate the victim
9 shall not delay the proceedings in the case or preclude the holding of a hearing or
10 the issuance of an order of expungement.

11 (4) For a petition brought under subsection (1)(a) of this section, the court shall order
12 expunged all records in the custody of the court and any records in the custody of
13 any other agency or official, including law enforcement records, if at the hearing the
14 court finds that:

15 (a) The offense was not a sex offense or an offense committed against a child;

16 (b) The person had not in the five (5) years prior to the filing of the petition for
17 expungement been convicted of a felony or a misdemeanor;

18 (c) No proceeding concerning a felony or misdemeanor is pending or being
19 instituted against the person; and

20 (d) The offense is not one subject to enhancement for a second or subsequent
21 offense or the time for such an enhancement has expired.

22 (5) For a petition brought under subsection (1)(b) of this section, the court may order
23 expunged all records in the custody of the court and any records in the custody of
24 any other agency or official, including law enforcement records, if at the hearing the
25 court finds that:

26 (a) The offense was not a sex offense or an offense committed against a child;

27 (b) The person had not in the five (5) years prior to the filing of the petition for

- 1 expungement been convicted of a felony or a misdemeanor;
- 2 (c) No proceeding concerning a felony or misdemeanor is pending or being
3 instituted against the person; and
- 4 (d) The offense is not one subject to enhancement for a second or subsequent
5 offense or the time for such an enhancement has expired.
- 6 (6) Upon the entry of an order to expunge the records, the proceedings in the case shall
7 be deemed never to have occurred; the court and other agencies shall cause records
8 to be deleted or removed from their computer systems so that the matter shall not
9 appear on official state-performed background checks; the persons and the court
10 may properly reply that no record exists with respect to the persons upon any
11 inquiry in the matter; and the person whose record is expunged shall not have to
12 disclose the fact of the record or any matter relating thereto on an application for
13 employment, credit, or other type of application.
- 14 (7) The filing fee for a petition under this section shall be one hundred dollars (\$100).
15 The first fifty dollars (\$50) of each fee collected pursuant to this subsection shall be
16 deposited into a trust and agency account for deputy clerks and shall not be
17 refundable. **The court may waive the filing fee required by this section if the court**
18 **finds that the person is indigent.**
- 19 (8) Copies of the order shall be sent to each agency or official named therein.
- 20 (9) Inspection of the records included in the order may thereafter be permitted by the
21 court only upon petition by the person who is the subject of the records and only to
22 those persons named in the petition.
- 23 (10) This section shall be deemed to be retroactive, and any person who has been
24 convicted of a misdemeanor prior to July 14, 1992, may petition the court in which
25 he was convicted, or if he was convicted prior to the inception of the District Court
26 to the District Court in the county where he now resides, for expungement of the
27 record of one (1) misdemeanor offense or violation or a series of misdemeanor

1 offenses or violations arising from a single incident, provided that the offense was
2 not one specified in subsection (4) and that the offense was not the precursor
3 offense of a felony offense for which he was subsequently convicted. This section
4 shall apply only to offenses against the Commonwealth of Kentucky.

5 (11) As used in this section, "violation" has the same meaning as in KRS 500.080.

6 (12) Any person denied an expungement prior to June 25, 2013, due to the presence of a
7 traffic infraction on his or her record may file a new petition for expungement of the
8 previously petitioned offenses, which the court shall hear and decide under the
9 terms of this section. No court costs or other fees, from the court or any other
10 agency, shall be required of a person filing a new petition under this subsection.

11 ➔Section 3. KRS 431.079 is amended to read as follows:

12 (1) Every petition or application filed seeking expungement of a conviction shall
13 include a certification of eligibility for expungement. The Department of Kentucky
14 State Police and the Administrative Office of the Courts shall certify that the
15 agencies have conducted a criminal background check on the petitioner and whether
16 or not the petitioner is eligible to have the requested record expunged. The
17 Department of Kentucky State Police shall promulgate administrative regulations to
18 implement this section, in consultation with the Administrative Office of the
19 Courts. *The court may waive the fee required for a certification of eligibility*
20 *pursuant to this section if the court finds that the person is indigent.*

21 (2) Nothing in this section shall be construed to prohibit the expungement of a case
22 ordered by a court of competent jurisdiction.

23 (3) For the purposes of this section, KRS 431.073, 431.076, and 431.078,
24 "expungement" means the removal or deletion of records by the court and other
25 agencies which prevents the matter from appearing on official state-performed
26 background checks.