

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 convicted of a Class D felony violation of KRS 17.175,
5 186.990, 194A.505, 194B.505, 217.181, 217.207, 217.208, 218A.140, 218A.1411,
6 218A.1412, 218A.1415, 218A.1416, 218A.1417, 218A.1418, 218A.1423,
7 218A.1439, 218A.282, 218A.284, 218A.286, 218A.320, 218A.322, 218A.324,
8 218A.500, 244.165, 286.11-057, 304.47-025, 324.990, 365.241, 434.155, 434.650,
9 434.675, 434.850, 434.872, 508.060, 511.040, 512.020, 514.030, 514.040, 514.050,
10 514.060, 514.065, 514.070, 514.080, 514.090, 514.100, 514.110, 514.120, 514.140,
11 514.150, 514.160, 516.030, 516.060, 516.090, 516.108, 517.120, 518.040, 520.070,
12 522.040, 524.100, 525.113, 526.020, 526.030, 528.020, 528.040, 528.050, 530.010,
13 or 530.050, a misdemeanor violation under KRS Chapter 218A which is penalized
14 as a Class D felony pursuant to KRS 218A.992, or a series of Class D felony
15 violations of one (1) or more statutes enumerated in this section arising from a
16 single incident, or an offense prior to January 1, 1975, which was punishable by
17 not more than five (5) years' incarceration and did not result in serious bodily
18 injury or death, or who has been granted a full pardon for any offense, may file
19 with the court in which he or she was convicted an application to have the judgment
20 vacated. The application shall be filed as a motion in the original criminal case. The
21 person shall be informed of the right at the time of adjudication.
- 22 (2) A verified application to have the judgment vacated under this section shall be filed
23 no sooner than five (5) years after the completion of the person's sentence, or five
24 (5) years after the successful completion of the person's probation or parole,
25 whichever occurs later. Upon the payment of the filing fee and the filing of the
26 application, the Circuit Court clerk shall serve a notice of filing upon the office of
27 the Commonwealth's attorney or county attorney that prosecuted the case and the

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

11 (3) Upon the filing of the Commonwealth's response to an application, or if no response
12 is received, no later than one hundred twenty (120) days after the filing of the
13 application, the court shall set a date for a hearing and the Circuit Court clerk shall
14 notify the office of the Commonwealth's attorney or county attorney that prosecuted
15 the case. The office of the Commonwealth's attorney or county attorney that
16 prosecuted the case shall notify the victim of the crime, if there was an identified
17 victim. The Commonwealth's attorney or county attorney shall be authorized to
18 obtain without payment of any fee information from the Transportation Cabinet
19 regarding the crime victim's address on file regarding any vehicle operator's license
20 issued to that person.

21 (4) The court may order the judgment vacated, and if the judgment is vacated the court
22 shall dismiss with prejudice any charges which are eligible for expungement under
23 subsection (1) of this section or KRS 431.076 or 431.078, and order expunged all
24 records in the custody of the court and any records in the custody of any other
25 agency or official, including law enforcement records, if the court finds that:

26 (a) The person had not previously had a felony conviction vacated and the record
27 expunged pursuant to this section;

- 1 (b) The person had not in the five (5) years prior to the filing of the application to
2 have the judgment vacated been convicted of a felony or a misdemeanor; and
- 3 (c) No proceeding concerning a felony or misdemeanor is pending or being
4 instituted against the person.
- 5 (5) If the court has received a response from the office of the Commonwealth's attorney
6 or county attorney that prosecuted the case stating no objection to the application to
7 have the judgment vacated, or if one hundred twenty (120) days have elapsed since
8 the filing of the application and no response has been received, the court may,
9 without a hearing, vacate the judgment in the manner established in subsection (4)
10 of this section.
- 11 (6) Upon entry of an order vacating and expunging a conviction, the original conviction
12 shall be vacated and the record shall be expunged. The court and other agencies
13 shall cause records to be deleted or removed from their computer systems so that
14 the matter shall not appear on official state-performed background checks. The
15 court and other agencies shall reply to any inquiry that no record exists on the
16 matter. The person whose record is expunged shall not have to disclose the fact of
17 the record or any matter relating thereto on an application for employment, credit, or
18 other type of application. If the person is not prohibited from voting for any other
19 reason, the person's ability to vote shall be restored and the person may register to
20 vote.
- 21 (7) An order vacating a conviction under this section shall not extend or revive an
22 expired statute of limitations, shall not constitute a finding of legal error regarding
23 the proceedings leading to or resulting in the conviction, shall not nullify any
24 findings of fact or conclusions of law made by the trial court or any appellate court
25 regarding the conviction, and shall not constitute a finding of innocence regarding
26 the conviction.
- 27 (8) The Administrative Office of the Courts shall establish a form application to be

1 used in filing an application to have judgment vacated and records expunged.

2 (9) The filing fee for an application to have judgment vacated and records expunged
 3 shall be **two hundred dollars (\$200)**~~[five hundred dollars (\$500)]~~. The first fifty
 4 dollars (\$50) of each fee collected pursuant to this subsection shall be deposited into
 5 a trust and agency account for deputy clerks and shall not be refundable. **The**
 6 **remainder of the filing fee shall be deposited into the general fund, and shall be**
 7 **refunded if the application is denied. The court may waive all or any portion of**
 8 **the fee if the court finds that the applicant is indigent or financially unable to pay**
 9 **all or any portion of the fee. No filing fee shall be required as a condition for**
 10 **filing an application relating to an offense for which a full pardon has been**
 11 **granted.**

12 (10) This section shall be retroactive.

13 ➔Section 2. KRS 431.076 is amended to read as follows:

14 (1) A person who has been charged with a criminal offense and who has been found not
 15 guilty of the offense, or against whom charges have been dismissed ~~[with prejudice~~
 16 ~~]and not in exchange for a guilty plea to another offense, or against whom felony~~
 17 charges originally filed in the District Court have not resulted in an indictment by
 18 the grand jury, may petition the District or Circuit Court in which the charges were
 19 filed to expunge all records.

20 (2) The expungement petition shall be filed no sooner than sixty (60) days following
 21 the order of acquittal or dismissal **with prejudice** by the court or twelve (12) months
 22 following the date of the **order of dismissal without prejudice or** District Court
 23 decision to hold the matter to the grand jury. The petition shall be served upon the
 24 office of the Commonwealth's attorney or county attorney that prosecuted the case.

25 (3) Following the filing of the petition, the court may set a date for a hearing. If the
 26 court does so, it shall notify the county or Commonwealth's attorney, as appropriate,
 27 of an opportunity for a response to the expungement petition. In addition, if the

1 criminal charge relates to the abuse or neglect of a child, the court shall also notify
2 the Office of General Counsel of the Cabinet for Health and Family Services of an
3 opportunity for a response to the expungement petition. The counsel for the Cabinet
4 for Health and Family Services shall respond to the expungement petition, within
5 twenty (20) days of receipt of the notice, which period of time shall not be extended
6 by the court, if the Cabinet for Health and Family Services has custody of records
7 reflecting that the person charged with the criminal offense has been determined by
8 the cabinet or by a court under KRS Chapter 620 to be a substantiated perpetrator of
9 child abuse or neglect. If the cabinet fails to respond to the expungement petition or
10 if the cabinet fails to prevail, the order of expungement shall extend to the cabinet's
11 records. If the cabinet prevails, the order of expungement shall not extend to the
12 cabinet's records.

13 (4) If the court finds that there are no current charges or proceedings pending relating to
14 the matter for which the expungement is sought, the court may grant the petition
15 and order the expunging of all records in the custody of the court and any records in
16 the custody of any other agency or official, including law enforcement records. If
17 the expungement petition pertains to felony charges originally filed in the District
18 Court which have not resulted in an indictment by the grand jury, and the Circuit
19 Court or District Court grants the motion, it shall dismiss the charges and order the
20 expunging of the records. The court shall order the expunging on a form provided
21 by the Administrative Office of the Courts. Every agency, with records relating to
22 the arrest, charge, or other matters arising out of the arrest or charge, that is ordered
23 to expunge records, shall certify to the court within sixty (60) days of the entry of
24 the expungement order, that the required expunging action has been completed. All
25 orders enforcing the expungement procedure shall also be expunged.

26 (5) If an expungement is ordered under this section, an appellate court which issued an
27 opinion in the case may, upon motion of the petitioner in the case, order the

1 appellate case file to be sealed and also direct that the version of the appellate
2 opinion published on the court's Web site be modified to avoid use of the
3 petitioner's name in the case title and body of the opinion.

4 (6) After the expungement, the proceedings in the matter shall be deemed never to have
5 occurred. The court and other agencies shall delete or remove the records from their
6 computer systems so that any official state-performed background check will
7 indicate that the records do not exist. The court and other agencies shall reply to any
8 inquiry that no record exists on the matter. The person whose record is expunged
9 shall not have to disclose the fact of the record or any matter relating thereto on an
10 application for employment, credit, or other type of application.

11 (7) This section shall be retroactive.

12 ➔Section 3. KRS 431.078 is amended to read as follows:

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

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

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

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

24 (2) Except as provided in KRS 218A.275(8) and 218A.276(8), the petition shall be
25 filed no sooner than five (5) years after the completion of the person's sentence or
26 five (5) years after the successful completion of the person's probation, whichever
27 occurs later.

- 1 (3) Upon the filing of a petition, the court shall set a date for a hearing, no sooner than
2 thirty (30) days after the filing of the petition, and shall notify the county attorney;
3 the victim of the crime, if there was an identified victim; and any other person
4 whom the person filing the petition has reason to believe may have relevant
5 information related to the expungement of the record. Inability to locate the victim
6 shall not delay the proceedings in the case or preclude the holding of a hearing or
7 the issuance of an order of expungement.
- 8 (4) For a petition brought under subsection (1)(a) of this section, the court shall order
9 expunged all records in the custody of the court and any records in the custody of
10 any other agency or official, including law enforcement records, if at the hearing the
11 court finds that:
- 12 (a) The offense was not a sex offense or an offense committed against a child;
 - 13 (b) The person had not in the five (5) years prior to the filing of the petition for
14 expungement been convicted of a felony or a misdemeanor;
 - 15 (c) No proceeding concerning a felony or misdemeanor is pending or being
16 instituted against the person; and
 - 17 (d) If the law specifies a period for~~[The offense is not one subject to]~~
18 enhancement for a second or subsequent offense,~~[or]~~ the time for such an
19 enhancement has expired.
- 20 (5) For a petition brought under subsection (1)(b) of this section, the court may order
21 expunged all records in the custody of the court and any records in the custody of
22 any other agency or official, including law enforcement records, if at the hearing the
23 court finds that:
- 24 (a) The offense was not a sex offense or an offense committed against a child;
 - 25 (b) The person had not in the five (5) years prior to the filing of the petition for
26 expungement been convicted of a felony or a misdemeanor;
 - 27 (c) No proceeding concerning a felony or misdemeanor is pending or being

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

1 to the District Court in the county where he now resides, for expungement of the
2 record of one (1) misdemeanor offense or violation or a series of misdemeanor
3 offenses or violations arising from a single incident, provided that the offense was
4 not one specified in subsection (4) and that the offense was not the precursor
5 offense of a felony offense for which he was subsequently convicted. This section
6 shall apply only to offenses against the Commonwealth of Kentucky.

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

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

13 ➔Section 4. KRS 431.079 is amended to read as follows:

14 (1) Beginning January 1, 2014, every petition or application filed seeking expungement
15 of a conviction that has not been subject of a full pardon shall include a
16 certification of eligibility for expungement. The Department of Kentucky State
17 Police and the Administrative Office of the Courts shall certify that the agencies
18 have conducted a criminal background check on the petitioner and whether or not
19 the petitioner is eligible to have the requested record expunged. The Department of
20 Kentucky State Police shall promulgate administrative regulations to implement this
21 section, in consultation with the Administrative Office of the Courts.

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