

EXPUNGEMENTS

2016 HB 40 went into effect on July 15, 2016,
authorizing expanded misdemeanor and
felony expungements



EXPUNGEMENT CERTIFICATIONS, PRE- AND POST-2016 HB 40

| CALENDAR YEAR | EXPUNGEMENT CERTIFICATIONS |
|---------------|----------------------------|
| 2013 | 2,741 |
| 2014 | 9,027 |
| 2015 | 7,889 |
| 2016 | 11, 148 |
| 2017 | 11,918 |
| 2018 | 5,289 |



FELONY EXPUNGEMENTS SINCE 2016 HB 40

| Calendar Year | Felony Expungements Granted | Felony Expungements Denied |
|---------------|-----------------------------|----------------------------|
| 2016 | 83 | 2 |
| 2017 | 912 | 94 |
| 2018 | 330 | 8 |

*Total number of cases as obtained from Administrative Office of the Court's CourtNet database. Retrieved on May 29, 2018



AQCUITTED, DISMISSED, AND MISDEMEANOR CONVICTION EXPUNGEMENTS SINCE 2016 HB 40

| Calendar Year | Expungements Granted | Expungements Denied |
|---------------|----------------------|---------------------|
| 2016 | 4,367 | 192 |
| 2017 | 7,733 | 354 |
| 2018 | 3,373 | 148 |

Total number of cases as obtained from Administrative Office of the Court's CourtNet database. Retrieved on May 29, 2018.



EXPUNGEMENTS

ISSUES DURING THE CERTIFICATION PROCESS

*Properly Identifying a Defendant's Criminal History,
Contained in Multiple Sources*

- AOC and the KSP maintain separate records repositories with different data sources
- Quality and amount of data varies widely
- Judges have reported certifications are inaccurate, unreliable



EXPUNGEMENTS

ISSUES DURING THE CERTIFICATION PROCESS

Determining Whether an Offense Qualifies for Expungement

Issue 1: Citing specific Kentucky Revised Statute numbers for eligibility is problematic because statute numbers and penalty levels have been modified by the General Assembly throughout the years



431.073 Certain felony convictions may be vacated and the records expunged -- Application -- Hearing -- Vacating conviction without a hearing -- Order to vacate and expunge -- Application form and fee -- Retroactivity.

- (1) Any person who has been convicted of a Class D felony violation of KRS 17.175, 186.990, 194A.505, 194B.505, 217.181, 217.207, 217.208, 218A.140, 218A.1415, 218A.1416, 218A.1417, 218A.1418, 218A.1423, 218A.1439, 218A.282, 218A.284, 218A.286, 218A.320, 218A.322, 218A.324, 244.165, 286.11-057, 304.47-025, 324.990, 365.241, 434.155, 434.675, 434.850, 434.872, 511.040, 512.020, 514.030, 514.040, 514.050, 514.060, 514.065, 514.070, 514.080, 514.090, 514.100, 514.110, 514.120, 514.140, 514.150, 514.160, 516.030, 516.060, 516.090, 516.108, 517.120, 518.040, 522.040, 524.100, 525.113, 526.020, 526.030, 528.020, 528.040, 528.050, 530.010, or 530.050, or a series of Class D felony violations of one (1) or more statutes enumerated in this section arising from a single incident, or who has been granted a full pardon, may file with the court in which he or she was convicted an application to have the judgment vacated. The application shall be filed as a motion in the original criminal case. The person shall be informed of the right at the time of adjudication.



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ISSUES DURING THE CERTIFICATION PROCESS

Example:

KRS 218A.140 – Prohibited Acts Relating to Controlled Substances

- Most recently amended in 2011, is currently a Class D felony pertaining to prescriptions
- Prior to 1990, this section covered trafficking in a controlled substance, an offense not eligible under the list in KRS 431.073



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ISSUES DURING THE CERTIFICATION PROCESS

Determining Whether an Offense Qualifies for Expungement

Issue 2: Determining whether a charge was dismissed with or without prejudice, and being unable to expunge those dismissed without prejudice



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ISSUES DURING THE CERTIFICATION PROCESS

*Determining Whether an Offense Qualifies for
Expungement*

Issue 3: Disagreements with KSP's eligibility determination sometimes results in noncompliance with judicial orders



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OTHER ISSUES

- Need clarification as to jurisdiction of cases with felony charges referred to the grand jury, but there is no indictment – Circuit or District Court?
- Making sure the proper agencies receive the expungement order and that those agencies certify within 60 days of entry of the expungement order that the expungement has been completed
- Availability of information about the case once expunged – too much or too little?



EXPUNGEMENTS

Helping Kentucky's Citizens Make It Right

In 2017 and 2018, AOC Records staff assisted at Expungement Workshops sponsored by the Department of Public Advocacy in 12 counties across the state in cities like Lexington, Louisville, Ashland, Elizabethtown, Bowling Green, Paducah and Hopkinsville

Staff performed nearly 800 free background checks and assisted with questions about criminal history information



EXPUNGEMENTS

LOOKING AHEAD

Expungements are a key component of rehabilitation for many offenders, and we encourage the General Assembly to continue to extend eligibility to more people



EXPUNGEMENTS LOOKING AHEAD

2018 SB 171 is a welcome expansion, but could go further and be simpler

SB 171 creates four tiers of eligibility for felony expungement based upon the waiting period necessary before filing an application



| Proposed Waiting Period | Eligible for Felony Expungement |
|-------------------------|---|
| 5 years | 60 offenses authorized by 2016 HB 40 |
| 10 years | Trafficking in Marijuana, Unlawful Possession of a Meth Precursor, Unlawful Apparatus for Manufacture of Alcoholic Beverages, Holding Self Out as Private Investigator without License; Fraudulent Use of a Credit/Debit Card; Custodial Interference |
| 15 years | Prohibited activities (trafficking) relating to controlled substances; Use & investment of drug related income; trafficking and possession of synthetic drugs; unlawful distribution of meth precursors; controlled substances endangerment 4th; Dispensing controlled substances with prescription; pharmacy record keeping and inventory violations; prohibited practices concerning simulated controlled substances; trustee violations re: forfeiture liens; and defrauding secured creditors |
| 20 years | Any offense prior to Jan. 1, 1975, punishable by more than 5 years incarceration, not a sex offense or offense against a child, that did not result in serious bodily injury or death |



EXPUNGEMENTS

LOOKING AHEAD

- Piecemeal listing of eligible felony offenses slows the certification process down and can have unfair results
- Give judges and prosecutors more discretion to evaluate people on a case-by-case basis
- Create specific exclusions based on legislative intent, rather than providing a list of included offenses that depends upon statutes which may have changed over time



EXPUNGEMENTS

LOOKING AHEAD

- Make charges dismissed without prejudice eligible to be expunged while still preserving the prosecutor's ability to object based on the circumstances
- Clarify that the KSP eligibility determination is an agency decision that shall not be construed to prohibit the expungement of a case ordered by a court of competent jurisdiction
- Require expungement certification for charges with convictions, not acquittals or dismissals



Questions?

