

CHAPTER 94

(HB 40)

AN ACT relating to criminal records.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO READ AS FOLLOWS:

- (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.*
- (2) *A verified application to have the judgment vacated under this section shall be filed no sooner than five (5) years after the completion of the person's sentence, or five (5) years after the successful completion of the person's probation or parole, whichever occurs later. Upon the payment of the filing fee and the filing of the application, the Circuit Court clerk shall serve a notice of filing upon the office of the Commonwealth's attorney or county attorney that prosecuted the case and the county attorney of the county where the judgment was entered. The office of the Commonwealth's attorney or county attorney that prosecuted the case shall file a response within sixty (60) days after being served with the notice of filing. That time period may be extended for good cause, but the hearing on the application to vacate the judgment shall occur no later than one hundred twenty (120) days following the filing of the application. The inability to determine the location of the crime victim shall constitute good cause for an extension of time. No hearing upon the merits of the application shall be scheduled until the Commonwealth's response has been filed, or if no response is received, no later than one hundred twenty (120) days after the filing of the application.*
- (3) *Upon the filing of the Commonwealth's response to an application, or if no response is received, no later than one hundred twenty (120) days after the filing of the application, the court shall set a date for a hearing and the Circuit Court clerk shall notify the office of the Commonwealth's attorney or county attorney that prosecuted the case. The office of the Commonwealth's attorney or county attorney that prosecuted the case shall notify the victim of the crime, if there was an identified victim. The Commonwealth's attorney or county attorney shall be authorized to obtain without payment of any fee information from the Transportation Cabinet regarding the crime victim's address on file regarding any vehicle operator's license issued to that person.*
- (4) *The court may order the judgment vacated, and if the judgment is vacated the court shall dismiss with prejudice any charges which are eligible for expungement under subsection (1) of this section, Section 2 of this Act, or Section 3 of this Act, and order expunged all records in the custody of the court and any records in the custody of any other agency or official, including law enforcement records, if the court finds that:*
 - (a) *The person had not previously had a felony conviction vacated and the record expunged pursuant to this section;*
 - (b) *The person had not in the five (5) years prior to the filing of the application to have the judgment vacated been convicted of a felony or a misdemeanor; and*
 - (c) *No proceeding concerning a felony or misdemeanor is pending or being instituted against the person.*
- (5) *If the court has received a response from the office of the Commonwealth's attorney or county attorney that prosecuted the case stating no objection to the application to have the judgment vacated, or if one hundred twenty (120) days have elapsed since the filing of the application and no response has been received, the court may, without a hearing, vacate the judgment in the manner established in subsection (4) of this section.*

- (6) *Upon entry of an order vacating and expunging a conviction, the original conviction shall be vacated and the record shall be expunged. The court and other agencies shall cause records to be deleted or removed from their computer systems so that the matter shall not appear on official state-performed background checks. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record is expunged shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application. If the person is not prohibited from voting for any other reason, the person's ability to vote shall be restored and the person may register to vote.*
- (7) *An order vacating a conviction under this section shall not extend or revive an expired statute of limitations, shall not constitute a finding of legal error regarding the proceedings leading to or resulting in the conviction, shall not nullify any findings of fact or conclusions of law made by the trial court or any appellate court regarding the conviction, and shall not constitute a finding of innocence regarding the conviction.*
- (8) *The Administrative Office of the Courts shall establish a form application to be used in filing an application to have judgment vacated and records expunged.*
- (9) *The filing fee for an application to have judgment vacated and records expunged shall be five hundred dollars (\$500). The first fifty dollars (\$50) of each fee collected pursuant to this subsection shall be deposited into a trust and agency account for deputy clerks and shall not be refundable.*
- (10) *This section shall be retroactive.*

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

- (1) A person who has been charged with a criminal offense and who has been found not guilty of the offense, or against whom charges have been dismissed with prejudice~~[,]~~ and not in exchange for a guilty plea to another offense, *or against whom felony charges originally filed in the District Court have not resulted in an indictment by the grand jury*, may *petition*~~[make a motion, in]~~ the District or Circuit Court in which the charges were filed~~[,]~~ to expunge all records.
- (2) The expungement *petition*~~[motion]~~ shall be filed no sooner than sixty (60) days following the order of acquittal or dismissal by the court *or twelve (12) months following the date of the District Court decision to hold the matter to the grand jury. The petition shall be served upon the office of the Commonwealth's attorney or county attorney that prosecuted the case.*
- (3) Following the filing of the *petition*~~[motion]~~, the court may set a date for a hearing. If the court does so, it shall notify the county or Commonwealth's attorney, as appropriate, of an opportunity for a response to the expungement *petition*~~[motion]~~. In addition, if the criminal charge relates to the abuse or neglect of a child, the court shall also notify the Office of General Counsel of the Cabinet for Health and Family Services of an opportunity for a response to the expungement *petition*~~[motion]~~. The counsel for the Cabinet for Health and Family Services shall respond to the expungement *petition*~~[motion]~~, within twenty (20) days of receipt of the notice, which period of time shall not be extended by the court, if the Cabinet for Health and Family Services has custody of records reflecting that the person charged with the criminal offense has been determined by the cabinet or by a court under KRS Chapter 620 to be a substantiated perpetrator of child abuse or neglect. If the cabinet fails to respond to the expungement *petition*~~[motion]~~ or if the cabinet fails to prevail, the order of expungement shall extend to the cabinet's records. If the cabinet prevails, the order of expungement shall not extend to the cabinet's records.
- (4) If the court finds that there are no current charges or proceedings pending relating to the matter for which the expungement is sought, the court may grant the *petition*~~[motion]~~ and order the expunging of all records in the custody of the court and any records in the custody of any other agency or official, including law enforcement records. *If the expungement petition pertains to felony charges originally filed in the District Court which have not resulted in an indictment by the grand jury, and the Circuit Court or District Court grants the motion, it shall dismiss the charges and order the expunging of the records.* The court shall order the expunging on a form provided by the Administrative Office of the Courts. Every agency, with records relating to the arrest, charge, or other matters arising out of the arrest or charge, that is ordered to expunge records, shall certify to the court within sixty (60) days of the entry of the expungement order, that the required expunging action has been completed. All orders enforcing the expungement procedure shall also be expunged.
- (5) *If an expungement is ordered under this section, an appellate court which issued an opinion in the case may, upon motion of the petitioner in the case, order the appellate case file to be sealed and also direct that*

the version of the appellate opinion published on the court's Web site be modified to avoid use of the petitioner's name in the case title and body of the opinion.

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

~~(7)(6)~~ This section shall be retroactive.

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

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

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

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

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

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

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

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

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

(b) ~~{The person had no previous felony conviction;~~

~~(c) The person had not been convicted of any other misdemeanor or violation offense in the five (5) years prior to the conviction sought to be expunged;~~

~~(d) The person had not *in the five (5) years prior to the filing of the petition for expungement* {since the time of the conviction sought to be expunged} been convicted of a felony ~~or~~ a misdemeanor, ~~or a violation~~;~~

~~(e) No proceeding concerning a felony ~~or~~ misdemeanor, ~~or violation~~ is pending or being instituted against *the person* ~~him~~; and~~

~~(f) *The offense is not one subject to enhancement for a second or subsequent offense or the time for such an enhancement has expired* {The offense was an offense against the Commonwealth of Kentucky}.~~

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

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

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

- (c) *No proceeding concerning a felony or misdemeanor is pending or being instituted against the person; and*
- (d) *The offense is not one subject to enhancement for a second or subsequent offense or the time for such an enhancement has expired.*
- (6) Upon the entry of an order to expunge the records, ~~and payment to the circuit clerk of one hundred dollars (\$100),~~ the proceedings in the case shall be deemed never to have occurred; the court and other agencies shall cause records to be deleted or removed from their computer systems so that the matter shall not appear on official state-performed background checks; the persons and the court may properly reply that no record exists with respect to the persons upon any inquiry in the matter; and the person whose record is expunged shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application.
- (7) *The filing fee for a petition under this section shall be one hundred dollars (\$100).* The first fifty dollars (\$50) of each fee collected pursuant to this subsection shall be ~~deposited into the general fund, and the remainder shall be~~ deposited into a trust and agency account for deputy clerks *and shall not be refundable.*
- ~~(8)(6)~~ Copies of the order shall be sent to each agency or official named therein.
- ~~(9)(7)~~ Inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person who is the subject of the records and only to those persons named in the petition.
- ~~(10)(8)~~ This section shall be deemed to be retroactive, and any person who has been convicted of a misdemeanor prior to July 14, 1992, may petition the court in which he was convicted, or if he was convicted prior to the inception of the District Court to the District Court in the county where he now resides, for expungement of the record of one (1) misdemeanor offense or violation or a series of misdemeanor offenses or violations arising from a single incident, provided that the offense was not one specified in subsection (4) and that the offense was not the precursor offense of a felony offense for which he was subsequently convicted. This section shall apply only to offenses against the Commonwealth of Kentucky.
- ~~(11)(9)~~ As used in this section, "violation" has the same meaning as in KRS 500.080.
- ~~(12)(10)~~ Any person denied an expungement prior to June 25, 2013, due to the presence of a traffic infraction on his or her record may file a new petition for expungement of the previously petitioned offenses, which the court shall hear and decide under the terms of this section. No court costs or other fees, from the court or any other agency, shall be required of a person filing a new petition under this subsection.

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

- (1) Beginning January 1, 2014, every petition *or application* filed seeking expungement shall include a certification of eligibility for expungement. The Department of Kentucky State Police and the Administrative Office of the Courts shall certify that the agencies have conducted a criminal background check on the petitioner and whether or not the petitioner is eligible to have the requested record expunged. The Department of Kentucky State Police shall promulgate administrative regulations to implement this section, in consultation with the Administrative Office of the Courts.
- (2) For the purposes of this section, ~~and~~ KRS 431.076, *Section 1 of this Act*, and 431.078, "expungement" means the removal or deletion of records by the court and other agencies which prevents the matter from appearing on official state-performed background checks.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO READ AS FOLLOWS:

The Administrative Office of the Courts shall retain an index of expungement orders entered under Section 1 of this Act. The index shall only be accessible to persons preparing a certification of eligibility for expungement pursuant to Section 4 of this Act. If the index indicates that the person applying for expungement has had a prior felony expunged under Section 1 of this Act, the person preparing the report may, notwithstanding the provisions of Section 1 of this Act, access the expunged record and include information from the expunged record in the certification.

Signed by Governor April 12, 2016.