

CHAPTER 188

(SB 57)

AN ACT relating to expungement and making an appropriation therefor.

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

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

- (1) Any person who has been:
- (a) 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, **218A.500**, 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-]~~
 - (b) **Convicted of** a series of Class D felony violations of one (1) or more statutes enumerated in **subsection (1)(a) of this section** arising from a single incident;~~[-or who has been]~~
 - (c) Granted a full pardon~~[-];~~ **or**
 - (d) **Convicted of a Class D felony, or an offense prior to January 1, 1975 which was punishable by not more than five (5) years' incarceration, which was not a violation of KRS 189A.010, 508.032, or 519.055, abuse of public office, a sex offense, or an offense committed against a child, and did not result in serious bodily injury or death; or of a series of felony offenses eligible under this paragraph;**
- 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) 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.
- (b) 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.
- (c) **In any case in which the Commonwealth objects that the application is grossly incomplete, the court shall order the person or agency originating the application to supplement 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) (a) **In an application pursuant to subsection (1)(d) of this section, upon the filing of the Commonwealth's response objecting to the vacating of a judgment and expungement of a record, the court shall schedule a hearing within one hundred twenty (120) days of the Commonwealth's**

response. The prosecutor shall specify in the objection the reasons for believing a denial of the application is justified. At the hearing at which the applicant or his or her attorney must be present, the applicant must prove by clear and convincing evidence that:

1. *Vacating the judgment and expunging the record is consistent with the welfare and safety of the public;*
 2. *The action is supported by his or her behavior since the conviction or convictions, as evidenced that he or she has been active in rehabilitative activities in prison and is living a law-abiding life since release;*
 3. *The vacation and expungement is warranted by the interests of justice; and*
 4. *Any other matter deemed appropriate or necessary by the court to make a determination regarding the petition for expungement is met.*
- (b) *At the hearing, the applicant may testify as to the specific adverse consequences he or she may be subject to if the application is denied. The court may hear testimony of witnesses and any other matter the court deems proper and relevant to its determination regarding the application. The Commonwealth may present proof of any extraordinary circumstances that exist to deny the application. A victim of any offense listed in the application shall have an opportunity to be heard at any hearing held under this section.*
- (c) *If the court determines that circumstances warrant vacation and expungement and that the harm otherwise resulting to the applicant clearly outweighs the public interest in the criminal history record information being publicly available, then the original conviction or convictions shall be vacated and the records shall be expunged. The order of expungement shall not preclude a prosecutor's office from retaining a nonpublic record for law enforcement purposes only.*
- (5) 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 or KRS 431.076 or 431.078, and, ***upon full payment of the fee in subsection (11) of this section***, 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, ***after the effective date of this Act***, ~~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; ***and***
 - (d) ***For an application pursuant to subsection (1)(d) of this section, the person has been rehabilitated and poses no significant threat of recidivism.***
- ~~(6)~~~~(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 ***from the victim or the office of the Commonwealth's attorney or county attorney that prosecuted the case***, the court may, without a hearing, vacate the judgment in the manner established in subsection (4) of this section.
- ~~(7)~~~~(6)~~ Upon entry of an order vacating and expunging a conviction, the original conviction shall be vacated and, ***upon full payment of the fee in subsection (11) of this section***, 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.
- ~~(8)~~~~(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.

- ~~(9)(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.
- ~~(10)(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), which 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.
- (11) (a) *Upon the issuance of an order vacating and expunging a conviction pursuant to this section, the applicant shall be charged an expungement fee of two hundred fifty dollars (\$250), which may be payable by an installment plan in accordance with KRS 534.020.*
- (b) *When the order is issued, the court shall set a date, no sooner than eighteen (18) months after the date of the order, by which the defendant must comply with the installment payment plan. The applicant shall be given notice of the total amount due, the payment frequency, and the date by which all payments must be made. The notice shall state that the expungement cannot be completed until full payment is received, and that if the applicant has not completed the installment payment plan by the scheduled date, he or she shall appear on that date to show good cause as to why he or she is unable to satisfy the obligations. Notwithstanding provisions of KRS 534.020 to the contrary, no applicant shall be ordered to jail for failure to complete an installment plan ordered pursuant to this section.*
- (c) *The revenues and interest from the expungement fee shall be deposited in the expungement fund created in Section 4 of this Act.*
- ~~(12)(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 the District or Circuit Court in which the charges were filed to expunge all records.
- (2) The expungement petition shall be filed no sooner than sixty (60) days following the order of acquittal or dismissal *with prejudice* by the court, ~~or~~ twelve (12) months following the date of the District Court decision to hold the matter to the grand jury, *or five (5) years following the date of the order of dismissal without prejudice*. 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, 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. 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. The counsel for the Cabinet for Health and Family Services shall respond to the expungement petition, 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 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 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) This section shall be retroactive.

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

- (1) ~~[Beginning January 1, 2014,]~~Every petition or application filed seeking expungement *of a conviction* 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) *Nothing in this section shall be construed to prohibit the expungement of a case ordered by a court of competent jurisdiction.*
- (3) For the purposes of this section, KRS 431.073, 431.076, 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 4. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby created in the State Treasury a fund designated the "expungement fund."*
- (2) *The fund shall be administered by the Justice and Public Safety Cabinet.*
- (3) *Beginning on the effective date of this Act, the revenues and interest from the expungement fee imposed by Section 1 of this Act shall be deposited in the fund.*
- (4) *On January 1, April 1, July 1, and October 1 of each year, the balance of the fund shall be distributed as follows:*
 - (a) *Ten percent (10%) shall be distributed to the Department for Libraries and Archives;*
 - (b) *Forty percent (40%) shall be distributed to the Department of Kentucky State Police;*
 - (c) *Forty percent (40%) shall be equally distributed among the offices of Commonwealth's attorneys; and*
 - (d) *Ten percent (10%) shall be distributed to the Administrative Office of the Courts to be deposited into the trust and agency account for deputy circuit clerks along with the fee established in subsection (10) of Section 1 of this Act.*
- (5) *All interest earned on moneys in the fund shall be credited to the fund and shall not lapse.*
- (6) *Notwithstanding KRS 45.229, fund amounts not expended at the close of a fiscal year shall not lapse but shall be carried forward into the next fiscal year.*
- (7) *Moneys deposited in the fund are hereby appropriated for the purposes set forth in this section and shall not be appropriated or transferred by the General Assembly for any other purposes.*

Signed by Governor March 26, 2019.