

## CHAPTER 45

( HB 327 )

AN ACT relating to expungement of criminal records.

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

➔Section 1. KRS 431.076 is amended to read as follows:

- (1) (a) *On or after the effective date of this Act, if a court enters an order of acquittal of criminal charges against a person, or enters an order dismissing with prejudice all criminal charges in a case against a person and not in exchange for a guilty plea to another charge, the court shall order the record expunged upon the expiration of thirty (30) days, unless the person objects to the expungement. As used in this paragraph, "criminal charges" shall not include a traffic infraction not otherwise classified as a misdemeanor. The order expunging the records shall not require any action by the person.*
- (b) A person who has been charged with a criminal offense and who has been *acquitted*~~[found not guilty]~~ of the *charges*~~[offense]~~, or against whom charges have been dismissed and not in exchange for a guilty plea to another *charge*~~[offense]~~, ~~[or against whom felony charges originally filed in the District Court have not resulted in an indictment by the grand jury, ]and whose records have not been expunged pursuant to paragraph (a) of this subsection,~~ may petition the ~~[District or Circuit]~~ court in which the *disposition of the charges was made*~~[were filed]~~ to expunge all *charges*~~[records]~~.
- (c) *A person against whom felony charges originally filed in the District Court have not resulted in an indictment by the grand jury or in an information filed by the Commonwealth's Attorney may petition the District Court in which the charges were filed to dismiss and expunge all charges for which an indictment or information has not issued.*
- (2) ~~An~~~~The~~ expungement petition *brought under paragraph (b) or (c) of subsection (1) of this section* shall be filed no sooner than:
- (a) Sixty (60) days following the order of acquittal or dismissal with prejudice by the court;
- (b) ~~Six (6)~~~~[Twelve (12)]~~ months following the date of the District Court decision to hold the matter to the grand jury;~~[ ]~~ or
- (c) *For charges dismissed without prejudice:*
1. *For felony charges, three (3) years following the date of the order of dismissal without prejudice; or*
  2. *For misdemeanor charges, one (1) year following the date of the order of dismissal without prejudice.*
- ~~[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.]~~
- (3) (a) *If the court finds that the petition under subsection (1)(b) is properly brought, the court shall*~~[(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 ~~the~~~~[all]~~

records ~~in the custody of the court and any records in the custody of any other agency or official, including law enforcement records.~~

- (b) 1. If the expungement petition is ***brought under subsection (1)(c) of this section*** ~~[pertains to felony charges originally filed in the District Court which have not resulted in an indictment by the grand jury], the petition shall be served upon the offices of the county and Commonwealth's attorneys that prosecuted the case.~~
2. ***Following the filing of the petition, the court shall notify the county and Commonwealth's attorney of an opportunity for a response to the petition. The response shall be filed within ninety (90) days after the filing of the petition.***
3. ***If a response is not filed, ninety (90) days after the filing of the petition the court shall dismiss the charges without prejudice and order the expunging of the records.***
4. ***If a response is filed, ninety (90) days after the date the response is filed, if an indictment has not issued, the court*** ~~and the Circuit Court or District Court grants the motion, it~~ ***shall dismiss without prejudice the charges for which an indictment has not issued and order the expunging of the records.***
- (4) ***An order of expungement pursuant to this section shall expunge all criminal records in the custody of the court and any criminal records in the custody of any other agency or official, including law enforcement records, but no order of expungement pursuant to this section shall expunge records in the custody of the Department for Community Based Services.*** 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) (a) ***If an expungement is ordered under subsection (1)(a) or (b) of this section, an appellate court which issued an opinion in the case shall 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 defendant's name in the case title and body of the opinion.***
- ~~(b)(5)~~ If an expungement is ordered under ***subsection (1)(c) of 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) ***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.***
- (8) ***Except as provided in subsection (1)(a) of this section, this section shall be retroactive.***

Signed by Governor March 27, 2020.