

**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 -- Fees -- Retroactivity.**

- (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;
  - (b) Convicted of a series of Class D felony violations of one (1) or more statutes enumerated in paragraph (a) of this subsection arising from a single incident;
  - (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 June 27, 2019, 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;
  - (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) 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 (5) of this section.
- (7) 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) 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) 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) The filing fee for an application to have judgment vacated and records expunged shall be fifty dollars (\$50), which 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 KRS 431.0795.

(12) This section shall be retroactive.

**Effective:** June 27, 2019

**History:** Amended 2019 Ky. Acts ch. 188, sec. 1, effective June 27, 2019. -- Created 2016 Ky. Acts ch. 94, sec. 1, effective July 15, 2016.