

AN ACT relating to criminal expungement.

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 or a series of Class D felonies arising from a single incident may petition the court in which he or she was convicted for expungement of his or her felony record. The person shall be informed of the right at the time of adjudication.*
- (2) The petition shall be filed no sooner than five (5) years after the time of adjudication. The petition shall specify the names and addresses of all identified victims of the crime, if any, or, if a victim of the crime is deceased or otherwise unavailable, the name and address of a member of the victim's family. Inability to locate a victim shall not delay the proceedings in the case or preclude the holding of a hearing or the issuance of an order of expungement.*
- (3) Upon the filing of a petition, the court shall set a date for a hearing and shall mail a copy of the petition to the Commonwealth's attorney of the jurisdiction in which the petitioner was convicted and to each victim or family member identified in the petition together with a notice stating:*

 - (a) That a petition for expungement has been filed;*
 - (b) That the person named in the petition has been identified as a victim of the crime or as a family member of a victim of the crime;*
 - (c) That the person named in the petition has the right to consult with and be interviewed by the Commonwealth's attorney on the question of whether the request for expungement should be granted, and that the Commonwealth's attorney may communicate the person's opinion on the expungement petition to the court; and*
 - (d) The date, time, and place that the court has set the petition for a hearing.*

- (4) When considering an application for felony expungement, the Commonwealth's attorney shall:
- (a) Conduct a criminal record check to ascertain whether the person is eligible for felony expungement;
- (b) Interview and consult with any victim of the crime or a member of the victim's family if an interview or consultation is requested by that person; and
- (c) Conduct any other investigation the Commonwealth's attorney determines may be necessary with regard to the petitioner and the circumstances of the crime so as to enable him or her to make an informed decision whether to recommend felony expungement.
- (5) The result of any interview and recommendations of the victim of the crime or the victim's family member under subsection (4) of this section may be presented to the court when it considers an application for felony expungement.
- (6) The Commonwealth's attorney shall make a recommendation upon each application for felony expungement to the court. If the Commonwealth's attorney recommends against granting the petition for felony expungement, he or she shall set forth, with specificity and in detail, the reasons for opposing the petition. A recommendation against granting the petition for felony expungement shall be filed with the court and shall be a public record.
- (7) If the application for felony expungement is approved by the court, the court shall set a date for a hearing to approve the application in open court.
- (8) The Commonwealth's attorney shall take reasonable steps to notify the victim and the victim's family of the time, date, and location of the hearing.
- (9) If a member of the victim's family is a minor and wishes to speak before the court at the hearing, the court may exclude the public from the hearing if:
- (a) The court is notified by the Commonwealth's attorney prior to the hearing

of the minor's request to speak at the hearing; and

(b) The court finds that it may be detrimental to the minor's best interest to proceed with the approval of an expungement in open court.

(10) The court shall order all records in the custody of the court and any records in the custody of any other agency sealed if, at the hearing, the court finds that:

(a) The offense was not a sex offense, an offense committed against a minor, or a felony offense in KRS Chapter 209, 507, or 508;

(b) The person had no previous felony conviction;

(c) The person has not, since the time of the conviction in question, been convicted of a felony or misdemeanor;

(d) The person is not currently charged with a felony or a misdemeanor;

(e) The person has successfully completed any sentence of incarceration, probation, or conditional discharge;

(f) The person has paid all restitution ordered by a court; and

(g) The offense was an offense against the Commonwealth of Kentucky.

(11) (a) Except as provided in Section 2 of this Act, upon entry of an order to seal the records and payment to the circuit clerk's office of two hundred eighty dollars (\$280), all proceedings in the case shall be deemed never to have occurred; all index references shall be deleted; the person and the court may properly reply that no record exists with respect to the petitioner; and the petitioner shall not have to disclose facts relating to the record on an application for employment, credit, or any other type of application.

(b) The circuit clerk shall remit or retain the following portions of the fee collected pursuant to this section:

1. Seventy-five dollars (\$75) of the fee shall be retained by the clerk and deposited into a trust and agency account for use in processing the application and expunging the records;

2. One hundred twenty-five dollars (\$125) of the fee shall be forwarded to the Department of Kentucky State Police for use in processing the application and expunging the records; and

3. Eighty dollars (\$80) of the fee shall be forwarded to the Department of Corrections for use in processing the application and expunging the records.

(12) Copies of the order of expungement shall be sent to each agency or official holding records of the proceedings in question.

(13) Except as provided in Section 2 of this Act, inspection of records included in the order of expungement 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.

(14) This section shall be deemed to be retroactive.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO READ AS FOLLOWS:

(1) 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 presentence investigation under KRS 532.050. If the index indicates that the defendant for whom the presentence investigation is being prepared 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, both access the expunged record and include information from the expunged record in the presentence investigation report.

(2) If a defendant for whom a presentence investigation report is prepared under KRS 532.050 includes information accessed pursuant to subsection (1) of this section is subsequently:

(a) Found not guilty of the offense or offenses for which the presentence

investigation report was prepared; or
(b) Any charge for which the presentence investigation report was prepared is
dismissed with prejudice;
any information contained within the presentence investigation report obtained
pursuant to subsection (1) of this section shall be redacted in the applicable
presentence investigation report prepared or any record of the applicable
presentence investigation report held by the court or other agencies, no later than
sixty (60) days following the order of acquittal or dismissal by the court.

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

- (1) Any person who has been convicted of 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, may petition the court in which he was convicted for expungement of his misdemeanor or violation record, including a record of any charges for misdemeanors or violations 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 time of adjudication~~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 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) 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 since the time of the conviction sought to be expunged been convicted of a felony, a misdemeanor, or a violation;
 - (e) No proceeding concerning a felony, misdemeanor, or violation is pending or being instituted against him; and
 - (f) The offense was an offense against the Commonwealth of Kentucky.
- (5) 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. 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.
- (6) Copies of the order shall be sent to each agency or official named therein.
- (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) 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.

- (9) As used in this section, "violation" has the same meaning as in KRS 500.080.
- (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 527.040 is amended to read as follows:

- (1) A person is guilty of possession of a firearm by a convicted felon when he or she possesses, manufactures, or transports a firearm when he or she has been convicted of a felony, as defined by the laws of the jurisdiction in which he was convicted, in any state or federal court and has not:
- (a) Been granted a full pardon by the Governor or by the President of the United States;
 - (b) Been granted relief by the United States Secretary of the Treasury pursuant to the Federal Gun Control Act of 1968, as amended; or
 - (c) Had his or her felony conviction record expunged by any court in the Commonwealth.
- (2) Possession of a firearm by a convicted felon is a Class D felony unless the firearm possessed is a handgun in which case it is a Class C felony.

- (3) The provisions of this section shall apply to any youthful offender convicted of a felony offense under the laws of this Commonwealth. The exceptions contained in KRS 527.100 prohibiting possession of a handgun by a minor shall not apply to this section.
- (4) The provisions of this section with respect to handguns, shall apply only to persons convicted after January 1, 1975, and with respect to other firearms, to persons convicted after July 15, 1994.