

AN ACT relating to 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 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 make a motion, in the District or Circuit Court in which the charges were filed, to expunge all records.
- (2) The expungement 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.***
- (3) Following the filing of the 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 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 motion. The counsel for the Cabinet for Health and Family Services shall respond to the expungement 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 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 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. 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) 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, unless required by federal or state law or regulation.
- (6) This section shall be retroactive.
- ➔Section 2. KRS 431.078 is amended to read as follows:
- (1) Any person who has been convicted of a Class D felony, a misdemeanor, a violation, or a traffic infraction not otherwise classified as a misdemeanor or violation, or a series of Class D felonies, misdemeanors, violations, or traffic infractions arising from a single incident, may petition the court in which he was convicted for expungement of his or her felony, misdemeanor, or violation record, including a record of any charges [~~for misdemeanors or violations~~] that were dismissed, voided, 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 and shall notify the office of the Commonwealth's attorney or county attorney that prosecuted the case; 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) (a) 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:
1. (a) The offense was not a sex offense, a felony offense in KRS Chapter 209, or an offense committed against a child;
 2. (b) The person had no previous felony conviction;
 3. (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;
 4. (e) No proceeding concerning a felony, misdemeanor, or violation is pending or being instituted against him or her; ~~and~~
 5. (f) The offense was an offense against the Commonwealth of Kentucky; and
 6. *If the offense sought to be expunged is a felony, the person had not*

previously had a felony offense expunged under this section.

(b) 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 the offense sought to be expunged is a Class D felony and at the hearing the court finds that the person has previously had a felony offense expunged under this section and:

1. The offense which is the subject of the current petition was not a sex offense, a felony offense in KRS Chapter 209, or an offense committed against a child;
2. No proceeding concerning a felony, misdemeanor, or violation is pending or being instituted against him or her; and
3. The offense which is the subject of the current petition 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~~ 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, and ~~and~~

~~(7)~~ inspection of the records included in the order by persons who are not court, law enforcement, prosecutorial, or defense personnel 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.

~~(7)~~~~(8)~~ This section shall be deemed to be retroactive, and any person who has been convicted of *an offense expungeable under subsection (1) of this section prior to the effective date of this Act*~~[a misdemeanor prior to July 14, 1992,]~~ may petition the court in which he *or she* was convicted, or if he *or she* was convicted *of a nonfelony offense* prior to the inception of the District Court to the District Court in the county where he *or she* now resides, for *an* expungement *as allowed by this section*~~[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].~~

~~(8)~~~~(9)~~ As used in this section, "violation" has the same meaning as in KRS 500.080.

~~(9)~~~~(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 3. 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 *or she* 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 record expunged by any court of the Commonwealth of Kentucky.
- (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.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 413 IS CREATED TO READ AS FOLLOWS:

In any judicial or administrative proceeding alleging negligence or other fault in the hiring, retaining, licensing, certifying, admitting to a school or program, or otherwise transacting business or engaging in activity with a person, no information relating to a criminal charge against or conviction of that person that has been expunged before the occurrence of the act giving rise to the judicial or administrative proceeding may be introduced.