

**Local Mandate Fiscal Impact Estimate
Kentucky Legislative Research Commission
2016 Regular Session**

Part I: Measure Information

Bill Request #: 17

Bill #: HB 40 GA

Bill Subject/Title: An ACT relating to criminal records.

Sponsor: Rep. Darryl T. Owens

Unit of Government: City County Urban-County
Unified Local
 Charter County Consolidated Local Government

Office(s) Impacted: local and state law enforcement offices; jails; prosecutorial offices; governments

Requirement: Mandatory Optional

Effect on

Powers & Duties: Modifies Existing Adds New Eliminates Existing

Part II: Purpose and Mechanics

Under current law (KRS 431.078), a person convicted of a misdemeanor or a violation, or a series of misdemeanors or violations arising from a single incident, may petition the court in which that person was convicted for expungement of his or her misdemeanor or violation record; as long as the offense was not a sex offense or an offense committed against a child.

HB 40 GA modifies current law to allow a person convicted of a Class D felony to petition the court to have his or her criminal record expunged under the same conditions and procedures required for expungement of misdemeanors and violations (including court notification to the prosecuting attorney and the victim) with the following exceptions:

- the felony was a sex offense;
- there is a current proceeding concerning a felony, misdemeanor, or violation;
- the offense was an offense against the Commonwealth.
- the offense is a crime under KRS Chapter 209 - Protection of Adults,
- the crime is an offense committed against a child; and
- the conviction relates to abuse of public trust, child pornography, human trafficking, or domestic violence.

HB 40 GA also provides for the conditions under which a court, at its discretion, **MAY** expunge the records of felons who have had previous Class D convictions expunged unless:

- the felony was a sex offense;
- there is a current proceeding concerning a felony, misdemeanor, or violation;
- the offense was an offense against the Commonwealth.
- the offense is a crime under KRS Chapter 209 - Protection of Adults,
- the crime is an offense committed against a child; and
- the conviction relates to abuse of public trust, child pornography, human trafficking, or domestic violence.

HB 40 GA also allows expungement of felonies referred to a grand jury when there is no indictment. A person who has had his or her record expunged would be permitted to possess a firearm under KRS 527.040.

HB 40 GA provides for the disclosure of an expunged criminal record when required by federal or state law or regulation. The bill creates a new section of KRS Chapter 413 providing that 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.

Part III: Fiscal Explanation, Bill Provisions, and Estimated Cost

The fiscal impact of HB 40 GA on local government is identical to that of HB 40 of the 2015 Session of the General Assembly and is expected to be minimal. Local jails transfer custody of records upon release of inmates and will be unaffected. For local law enforcement agencies, there may be a minimal impact as it takes about thirty minutes to expunge a paper record. As time passes, there will be more expungement of computerized records, which takes not more than five minutes.

Although the local government fiscal impact of HB 40 GA is indeterminate (due to the impossibility of predicting a percentage of those who may petition to have a record expunged) the fiscal impact of HB 40 GA on units of local governments is expected to be minimal. The Kentucky State Police reports that according to the Kentucky Department of Corrections, the 10-year average number of cases involving Class D felony convictions (with statutory exclusions) is 15,800. The Kentucky State Police also estimated that there could be approximately 174, 068 Class D felony convictions eligible for retroactive expungement. The majority of sex offense convictions, or an offense under KRS Chapter 209, or an offense committed against a child was excluded from the above data.

Data Source(s): Administrative Office of the Courts, Kentucky State Police, Kentucky League of Cities, Kentucky Department of Corrections, Kentucky Jailers Association, Kentucky Association of Chiefs of Police, Frankfort City Police Department

Preparer: H. Marks **Reviewer:** JWN **Date:** 1/24/16

