

Requires a waiting time of five years to file a petition to have a Class D felony judgement vacated; requires service of the application on prosecutors; requires prosecutors to respond within 60 days and allows the court to extend to 120 days.

Allows the court to set a hearing after a response is received or 120 days pass.

Provides for a splitting of filing fees to include refundable and nonrefundable portions,

HB 40 SCS also creates a new section of KRS Chapter 431 to provide for an index of vacated and expunged convictions and prohibits an individual from vacating and expunging a second conviction.

Below is a description of HB 40 GA. The changes made by HB 40 SCS to the original provisions of HB 40 GA are highlighted.

HB 40 GA modifies current law (431.078) 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. **This provision is not in the SCS.**
- the offense is a crime under KRS Chapter 209 - Protection of Adults. **This provision is not in the SCS.**
- 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. **This provision is not in the SCS.**

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. **This provision is not in the SCS.**
- the offense is a crime under KRS Chapter 209 - Protection of Adults. **This provision is not in the SCS.**
- the crime is an offense committed against a child;
- the conviction relates to abuse of public trust, child pornography, human trafficking, or domestic violence. **This provision is not in the SCS.**

Moreover, in addition to the above-listed differences between **HB 40 GA** and **HB 40 SCS** with regard to KRS 431.078, **HB 40 SCS does not amend that statute to include felony convictions** as expungable offenses.

HB 40 GA also allows expungement of felonies referred to a grand jury when there is no indictment.

HB 40 GA allows a person who has had his or her record expunged would be permitted to possess a firearm under KRS 527.040. **This provision is not in the SCS.**

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. **These provisions are not in the SCS.**

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

The fiscal impact of HB 40 SCS is identical to that of HB 40 GA.

The fiscal impact of HB 40 GA and HB 40 SCS 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 and HB 40 SCS 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 and HB 40 SCS 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

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