

1 AN ACT relating to expungement.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 431.073 is amended to read as follows:

4 (1) **(a)** Any person who has been convicted of a Class D felony violation of KRS
5 17.175, 186.990, 194A.505, 194B.505, 217.181, 217.207, 217.208, 218A.140,
6 218A.1415, 218A.1416, 218A.1417, 218A.1418, 218A.1423, 218A.1439,
7 218A.282, 218A.284, 218A.286, 218A.320, 218A.322, 218A.324, 244.165,
8 286.11-057, 304.47-025, 324.990, 365.241, 434.155, 434.675, 434.850,
9 434.872, 511.040, 512.020, 514.030, 514.040, 514.050, 514.060, 514.065,
10 514.070, 514.080, 514.090, 514.100, 514.110, 514.120, 514.140, 514.150,
11 514.160, 516.030, 516.060, 516.090, 516.108, 517.120, 518.040, 522.040,
12 524.100, 525.113, 526.020, 526.030, 528.020, 528.040, 528.050, 530.010, or
13 530.050, or a series of Class D felony violations of one (1) or more statutes
14 enumerated in this section arising from a single incident, or who has been
15 granted a full pardon, may file with the court in which he or she was convicted
16 an application to have the judgment vacated. The application shall be filed as
17 a motion in the original criminal case. The person shall be informed of the
18 right at the time of adjudication.

19 **(b)** ***Any person who has been convicted of a Class D felony violation of a***
20 ***statute not enumerated in paragraph (a) of this subsection that was not a***
21 ***sex crime as defined in KRS 17.500, a criminal offense against a victim who***
22 ***is a minor as defined in KRS 17.500, or an offense that would classify the***
23 ***person as a violent offender under KRS 439.3401, or a series of Class D***
24 ***felony violations of one (1) or more statutes eligible under this paragraph***
25 ***arising from a single incident, may file with the court in which he or she***
26 ***was convicted an application to have the judgment vacated. The application***
27 ***shall be filed as a motion in the original criminal case. The person shall be***

1 *informed of the right at the time of adjudication.*

2 (2) A verified application *pursuant to subsection (1)(a) of this section* to have the
3 judgment vacated under this section shall be filed no sooner than five (5) years after
4 the completion of the person's sentence, or five (5) years after the successful
5 completion of the person's probation or parole, whichever occurs later. *A verified*
6 *application pursuant to subsection (1)(b) of this section to have the judgment*
7 *vacated under this section shall be filed no sooner than ten (10) years after the*
8 *completion of the person's sentence, or ten (10) years after the successful*
9 *completion of the person's probation or parole, whichever occurs later.* Upon the
10 payment of the filing fee and the filing of the application, the Circuit Court clerk
11 shall serve a notice of filing upon the office of the Commonwealth's attorney or
12 county attorney that prosecuted the case and the county attorney of the county where
13 the judgment was entered. The office of the Commonwealth's attorney or county
14 attorney that prosecuted the case shall file a response within sixty (60) days after
15 being served with the notice of filing. That time period may be extended for good
16 cause, but the hearing on the application to vacate the judgment shall occur no later
17 than one hundred twenty (120) days following the filing of the application. The
18 inability to determine the location of the crime victim shall constitute good cause
19 for an extension of time. No hearing upon the merits of the application shall be
20 scheduled until the Commonwealth's response has been filed, or if no response is
21 received, no later than one hundred twenty (120) days after the filing of the
22 application.

23 (3) Upon the filing of the Commonwealth's response to an application, or if no response
24 is received, no later than one hundred twenty (120) days after the filing of the
25 application, the court shall set a date for a hearing and the Circuit Court clerk shall
26 notify the office of the Commonwealth's attorney or county attorney that prosecuted
27 the case. The office of the Commonwealth's attorney or county attorney that

1 prosecuted the case shall notify the victim of the crime, if there was an identified
2 victim. The Commonwealth's attorney or county attorney shall be authorized to
3 obtain without payment of any fee information from the Transportation Cabinet
4 regarding the crime victim's address on file regarding any vehicle operator's license
5 issued to that person.

6 (4) The court may order the judgment vacated, and if the judgment is vacated the court
7 shall dismiss with prejudice any charges which are eligible for expungement under
8 subsection (1) of this section or KRS 431.076 or 431.078, and order expunged all
9 records in the custody of the court and any records in the custody of any other
10 agency or official, including law enforcement records, if the court finds that:

11 (a) The person had not previously had a felony conviction vacated and the record
12 expunged pursuant to this section;

13 (b) 1. For an application pursuant to subsection (1)(a) of this section, the
14 person had not in the five (5) years prior to the filing of the application
15 to have the judgment vacated been convicted of a felony or a
16 misdemeanor; or

17 2. For an application pursuant to subsection (1)(b) of this section, the
18 person had not in the ten (10) years prior to the filing of the
19 application to have the judgment vacated been convicted of a felony or
20 a misdemeanor; and

21 (c) No proceeding concerning a felony or misdemeanor is pending or being
22 instituted against the person.

23 (5) If the court has received a response from the office of the Commonwealth's attorney
24 or county attorney that prosecuted the case stating no objection to the application to
25 have the judgment vacated, or if one hundred twenty (120) days have elapsed since
26 the filing of the application and no response has been received, the court may,
27 without a hearing, vacate the judgment in the manner established in subsection (4)

1 of this section.

2 (6) Upon entry of an order vacating and expunging a conviction, the original conviction
3 shall be vacated and the record shall be expunged. The court and other agencies
4 shall cause records to be deleted or removed from their computer systems so that
5 the matter shall not appear on official state-performed background checks. The
6 court and other agencies shall reply to any inquiry that no record exists on the
7 matter. The person whose record is expunged shall not have to disclose the fact of
8 the record or any matter relating thereto on an application for employment, credit, or
9 other type of application. If the person is not prohibited from voting for any other
10 reason, the person's ability to vote shall be restored and the person may register to
11 vote.

12 (7) An order vacating a conviction under this section shall not extend or revive an
13 expired statute of limitations, shall not constitute a finding of legal error regarding
14 the proceedings leading to or resulting in the conviction, shall not nullify any
15 findings of fact or conclusions of law made by the trial court or any appellate court
16 regarding the conviction, and shall not constitute a finding of innocence regarding
17 the conviction.

18 (8) The Administrative Office of the Courts shall establish a form application to be
19 used in filing an application to have judgment vacated and records expunged.

20 (9) The filing fee for an application to have judgment vacated and records expunged
21 shall be five hundred dollars (\$500). The first fifty dollars (\$50) of each fee
22 collected pursuant to this subsection shall be deposited into a trust and agency
23 account for deputy clerks and shall not be refundable.

24 (10) This section shall be retroactive.