

1 AN ACT relating to criminal justice and making an appropriation therefor.

2 WHEREAS, the Department of Kentucky State Police has suffered drastic budget
3 cuts over the last decade creating a struggle to balance dwindling resources against the
4 criminal justice and public protection needs of the Commonwealth; and

5 WHEREAS, despite these drastic cuts, the Department of Kentucky State Police
6 continues to protect the citizens of the Commonwealth, including our vulnerable children,
7 by monitoring the over 11,000 sex offender registrants currently living in our state; and

8 WHEREAS, despite these dwindling resources, the Department of Kentucky State
9 Police has received over 16,000 expungement orders annually over the last three years
10 and continues the time-consuming process of expunging citizens' criminal records, a
11 process that allows these citizens to move on with their lives by removing a huge
12 impediment to their employment; and

13 WHEREAS, the Department of Kentucky State Police offers the lowest salary for
14 forensic analysts in the surrounding states and is often a training ground for forensic
15 analysts who leave for positions in those surrounding states that offer up to double their
16 salaries in the Commonwealth, resulting in more than 1,770 assignments awaiting
17 analysis; and

18 WHEREAS, despite both dwindling resources and ever-shrinking manpower, the
19 Department of Kentucky State Police's forensic laboratories remain the only crime labs,
20 public or private, in Kentucky, and continue to analyze evidence from over 450 law
21 enforcement agencies across the Commonwealth, ensuring that perpetrators are brought
22 to justice; and

23 WHEREAS, the Department of Kentucky State Police desperately needs additional
24 funds to continue to monitor offenders, process expungements, and provide much-needed
25 raises for forensic analysts as well as much-needed equipment for the forensic
26 laboratories;

27 NOW, THEREFORE,

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

2 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO
3 READ AS FOLLOWS:

4 *(1) As used in this section:*

5 *(a) "Child abuse offender registry" means the registry for child abuse*
6 *established under subsection (2) of this section;*

7 *(b) "Child abuse offense" means:*

8 *1. A crime under KRS Chapter 507, 507A, 508, 509, or 530, excluding*
9 *KRS 530.050; or*

10 *2. KRS 510.140, 510.148, 510.150, or 529.110;*

11 *when the victim was a minor under the age of eighteen (18) years old;*

12 *(c) "Department" means the Department of Kentucky State Police;*

13 *(d) "Offender" means any person eighteen (18) years of age or older at the*
14 *time of the offense or any youthful offender, as defined in KRS 600.020,*
15 *who has been:*

16 *1. Convicted of or entered a guilty plea or Alford plea to a child abuse*
17 *offense; or*

18 *2. Placed on pretrial diversion pursuant to KRS 533.250 for a child*
19 *abuse offense, until the diversionary period is successfully completed;*
20 *and*

21 *(e) "Offender information" means the offender's name, age, county of*
22 *residence, and current photograph; a brief description of the crime or*
23 *crimes committed; and other identifying information determined necessary*
24 *by the department.*

25 *(2) As funding becomes available, the department shall develop and operate a child*
26 *abuse offender registry for offenders.*

27 *(3) Once the department has developed the child abuse offender registry pursuant to*

1 subsection (2) of this section, an offender, upon his or her release by the court,
2 the Parole Board, the Department of Corrections, the Department of Juvenile
3 Justice, or any detention facility, shall be required to register for five (5) years
4 with the department. The person in charge of the release shall facilitate the
5 registration process.

6 (4) Any person required to register pursuant to subsection (3) of this section shall be
7 informed of the duty to register by the court at the time of sentencing if the court
8 grants probation or conditional discharge or does not impose a penalty of
9 incarceration, or if incarcerated, by the official in charge of the place of
10 confinement upon release.

11 (5) (a) Except as provided in paragraph (b) of this subsection, any person required
12 to register pursuant to subsection (3) of this section shall be required to pay
13 a registration fee of one hundred dollars (\$100) to the department. The fee
14 shall be deposited by the department into the offender registry fund
15 established in Section 2 of this Act.

16 (b) The department shall waive the annual registration fee if the registrant is
17 found by a court of competent jurisdiction to be an indigent person as
18 defined in KRS 31.100.

19 (c) The registrant shall not be prevented from registering because of failure to
20 pay registration fee.

21 (6) (a) Once the department has developed the child abuse offender registry
22 pursuant to subsection (2) of this section, the department shall establish a
23 Web site available to the public. The Web site shall display offender
24 information and shall be updated at least once every thirty (30) days.

25 (b) Upon receiving notice from the court of conviction that an offender is
26 required to register, the department shall post the offender information
27 provided by the court on the Web site.

1 (7) The department shall promulgate administrative regulations to establish and
 2 operate the child abuse offender registry, including but not limited to policies and
 3 procedures:

4 (a) For compiling, publishing, and maintaining offender information;

5 (b) For how an individual may be removed from the registry; and

6 (c) To ensure compliance with all other state and federal laws.

7 (8) Any department employee who disseminates, or does not disseminate, offender
 8 information in good faith compliance with the requirements of this section shall
 9 be immune from criminal and civil liability for the dissemination or lack thereof.

10 ➔Section 2. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO
 11 READ AS FOLLOWS:

12 (1) The offender registry fund is created as a restricted fund that shall consist of
 13 moneys deposited pursuant to Sections 1, 3, and 4 of this Act and shall be used
 14 for the purposes set forth in subsection (3) of this section. The Department of
 15 Kentucky State Police shall administer the fund.

16 (2) Notwithstanding KRS 45.229, any moneys in the fund shall not lapse but shall be
 17 carried forward to the next fiscal year. In addition, any interest earned on moneys
 18 in the fund shall become a part of the fund and shall not lapse.

19 (3) All funds in the offender registry fund are hereby appropriated for the following
 20 purposes:

21 (a) For every fee deposited pursuant to Section 1 of this Act:

22 1. Fifty dollars (\$50) to the Department of Kentucky State Police to
 23 develop and operate the child abuse offender registry in accordance
 24 with Section 1 of this Act;

25 2. Twenty-five dollars (\$25) to Prevent Child Abuse Kentucky; and

26 3. Twenty-five dollars (\$25) to the Kentucky Association of Children's
 27 Advocacy Centers; and

1 **(b) For every fee deposited pursuant to Section 3 or 4 of this Act, to the**
2 **Department of Kentucky State Police to process expungements and to**
3 **develop and operate the child abuse offender registry and the sex offender**
4 **registry.**

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

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

20 (2) A verified application to have the judgment vacated under this section shall be filed
21 no sooner than five (5) years after the completion of the person's sentence, or five
22 (5) years after the successful completion of the person's probation or parole,
23 whichever occurs later. Upon the payment of the filing fee and the filing of the
24 application, the Circuit Court clerk shall serve a notice of filing upon the office of
25 the Commonwealth's attorney or county attorney that prosecuted the case and the
26 county attorney of the county where the judgment was entered. The office of the
27 Commonwealth's attorney or county attorney that prosecuted the case shall file a

1 response within sixty (60) days after being served with the notice of filing. That
2 time period may be extended for good cause, but the hearing on the application to
3 vacate the judgment shall occur no later than one hundred twenty (120) days
4 following the filing of the application. The inability to determine the location of the
5 crime victim shall constitute good cause for an extension of time. No hearing upon
6 the merits of the application shall be scheduled until the Commonwealth's response
7 has been filed, or if no response is received, no later than one hundred twenty (120)
8 days after the filing of the application.

9 (3) Upon the filing of the Commonwealth's response to an application, or if no response
10 is received, no later than one hundred twenty (120) days after the filing of the
11 application, the court shall set a date for a hearing and the Circuit Court clerk shall
12 notify the office of the Commonwealth's attorney or county attorney that prosecuted
13 the case. The office of the Commonwealth's attorney or county attorney that
14 prosecuted the case shall notify the victim of the crime, if there was an identified
15 victim. The Commonwealth's attorney or county attorney shall be authorized to
16 obtain without payment of any fee information from the Transportation Cabinet
17 regarding the crime victim's address on file regarding any vehicle operator's license
18 issued to that person.

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

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

26 (b) The person had not in the five (5) years prior to the filing of the application to
27 have the judgment vacated been convicted of a felony or a misdemeanor; and

- 1 (c) No proceeding concerning a felony or misdemeanor is pending or being
2 instituted against the person.
- 3 (5) If the court has received a response from the office of the Commonwealth's attorney
4 or county attorney that prosecuted the case stating no objection to the application to
5 have the judgment vacated, or if one hundred twenty (120) days have elapsed since
6 the filing of the application and no response has been received, the court may,
7 without a hearing, vacate the judgment in the manner established in subsection (4)
8 of this section.
- 9 (6) Upon entry of an order vacating and expunging a conviction, the original conviction
10 shall be vacated and the record shall be expunged. The court and other agencies
11 shall cause records to be deleted or removed from their computer systems so that
12 the matter shall not appear on official state-performed background checks. The
13 court and other agencies shall reply to any inquiry that no record exists on the
14 matter. The person whose record is expunged shall not have to disclose the fact of
15 the record or any matter relating thereto on an application for employment, credit, or
16 other type of application. If the person is not prohibited from voting for any other
17 reason, the person's ability to vote shall be restored and the person may register to
18 vote.
- 19 (7) An order vacating a conviction under this section shall not extend or revive an
20 expired statute of limitations, shall not constitute a finding of legal error regarding
21 the proceedings leading to or resulting in the conviction, shall not nullify any
22 findings of fact or conclusions of law made by the trial court or any appellate court
23 regarding the conviction, and shall not constitute a finding of innocence regarding
24 the conviction.
- 25 (8) The Administrative Office of the Courts shall establish a form application to be
26 used in filing an application to have judgment vacated and records expunged.
- 27 (9) The filing fee for an application to have judgment vacated and records expunged

1 shall be five hundred dollars (\$500). The first fifty dollars (\$50) of each fee
2 collected pursuant to this subsection shall be deposited into a trust and agency
3 account for deputy clerks and shall not be refundable. Two hundred fifty dollars
4 (\$250) of each fee collected pursuant to this subsection shall be deposited into the
5 offender registry fund established in Section 2 of this Act.

6 (10) This section shall be retroactive.

7 ➔Section 4. KRS 431.078 is amended to read as follows:

8 (1) Any person who has been convicted of:

9 (a) A misdemeanor, a violation, or a traffic infraction not otherwise classified as a
10 misdemeanor or violation, or a series of misdemeanors, violations, or traffic
11 infractions arising from a single incident; or

12 (b) A series of misdemeanors, violations, or traffic infractions not arising from a
13 single incident;

14 may petition the court in which he was convicted for expungement of his
15 misdemeanor or violation record within that judicial district, including a record of
16 any charges for misdemeanors, violations, or traffic infractions that were dismissed
17 or amended in the criminal action. The person shall be informed of the right at the
18 time of adjudication.

19 (2) Except as provided in KRS 218A.275(8) and 218A.276(8), the petition shall be
20 filed no sooner than five (5) years after the completion of the person's sentence or
21 five (5) years after the successful completion of the person's probation, whichever
22 occurs later.

23 (3) Upon the filing of a petition, the court shall set a date for a hearing, no sooner than
24 thirty (30) days after the filing of the petition, and shall notify the county attorney;
25 the victim of the crime, if there was an identified victim; and any other person
26 whom the person filing the petition has reason to believe may have relevant
27 information related to the expungement of the record. Inability to locate the victim

1 shall not delay the proceedings in the case or preclude the holding of a hearing or
2 the issuance of an order of expungement.

3 (4) For a petition brought under subsection (1)(a) of this section, the court shall order
4 expunged all records in the custody of the court and any records in the custody of
5 any other agency or official, including law enforcement records, if at the hearing the
6 court finds that:

7 (a) The offense was not a sex offense or an offense committed against a child;

8 (b) The person had not in the five (5) years prior to the filing of the petition for
9 expungement been convicted of a felony or a misdemeanor;

10 (c) No proceeding concerning a felony or misdemeanor is pending or being
11 instituted against the person; and

12 (d) The offense is not one subject to enhancement for a second or subsequent
13 offense or the time for such an enhancement has expired.

14 (5) For a petition brought under subsection (1)(b) of this section, the court may order
15 expunged all records in the custody of the court and any records in the custody of
16 any other agency or official, including law enforcement records, if at the hearing the
17 court finds that:

18 (a) The offense was not a sex offense or an offense committed against a child;

19 (b) The person had not in the five (5) years prior to the filing of the petition for
20 expungement been convicted of a felony or a misdemeanor;

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

23 (d) The offense is not one subject to enhancement for a second or subsequent
24 offense or the time for such an enhancement has expired.

25 (6) Upon the entry of an order to expunge the records, the proceedings in the case shall
26 be deemed never to have occurred; the court and other agencies shall cause records
27 to be deleted or removed from their computer systems so that the matter shall not

1 appear on official state-performed background checks; the persons and the court
2 may properly reply that no record exists with respect to the persons upon any
3 inquiry in the matter; and the person whose record is expunged shall not have to
4 disclose the fact of the record or any matter relating thereto on an application for
5 employment, credit, or other type of application.

6 (7) The filing fee for a petition under this section shall be one hundred dollars (\$100).
7 The first fifty dollars (\$50) of each fee collected pursuant to this subsection shall be
8 deposited into a trust and agency account for deputy clerks and shall not be
9 refundable. Twenty-five dollars (\$25) of each fee collected pursuant to this
10 subsection shall be deposited into the offender registry fund established in
11 Section 2 of this Act.

12 (8) Copies of the order shall be sent to each agency or official named therein.

13 (9) Inspection of the records included in the order may thereafter be permitted by the
14 court only upon petition by the person who is the subject of the records and only to
15 those persons named in the petition.

16 (10) This section shall be deemed to be retroactive, and any person who has been
17 convicted of a misdemeanor prior to July 14, 1992, may petition the court in which
18 he was convicted, or if he was convicted prior to the inception of the District Court
19 to the District Court in the county where he now resides, for expungement of the
20 record of one (1) misdemeanor offense or violation or a series of misdemeanor
21 offenses or violations arising from a single incident, provided that the offense was
22 not one specified in subsection (4) and that the offense was not the precursor
23 offense of a felony offense for which he was subsequently convicted. This section
24 shall apply only to offenses against the Commonwealth of Kentucky.

25 (11) As used in this section, "violation" has the same meaning as in KRS 500.080.

26 (12) Any person denied an expungement prior to June 25, 2013, due to the presence of a
27 traffic infraction on his or her record may file a new petition for expungement of the

1 previously petitioned offenses, which the court shall hear and decide under the
2 terms of this section. No court costs or other fees, from the court or any other
3 agency, shall be required of a person filing a new petition under this subsection.

4 ➔Section 5. KRS 42.320 is amended to read as follows:

- 5 (1) There is hereby established the court cost distribution fund, which is created to
6 provide a central account into which the court costs collected by all circuit clerks,
7 under KRS 23A.205(1) and 24A.175(1), shall be paid.
- 8 (2) The fund shall be administered by the Finance and Administration Cabinet, which
9 shall make monthly disbursements from the fund according to the following
10 schedule:
- 11 (a) **Forty-four percent (44%)**~~Forty-nine percent (49%)~~ of each court cost shall
12 be paid into the general fund;
- 13 (b) Ten and eight-tenths percent (10.8%) of each court cost, up to five million
14 four hundred thousand dollars (\$5,400,000), shall be paid into the State
15 Treasury for the benefit and use of the Kentucky Local Correctional Facilities
16 Construction Authority under KRS 441.605 to 441.695;
- 17 (c) Six and one-half percent (6.5%) of each court cost, up to three million two
18 hundred fifty thousand dollars (\$3,250,000), shall be paid into the spinal cord
19 and head injury research trust fund created in KRS 211.504;
- 20 (d) Five and one-half percent (5.5%) of each court cost, up to two million seven
21 hundred fifty thousand dollars (\$2,750,000), shall be paid into the traumatic
22 brain injury trust fund created in KRS 211.476;
- 23 (e) Five percent (5%) of each court cost, up to two million five hundred thousand
24 dollars (\$2,500,000), shall be paid into a trust and agency account with the
25 Administrative Office of the Courts and is to be used by the circuit clerks to
26 hire additional deputy clerks and to enhance deputy clerk salaries;
- 27 (f) Three and one-half percent (3.5%) of each court cost, up to one million seven

1 hundred fifty thousand dollars (\$1,750,000), shall be paid to a special trust
2 and agency account that shall not lapse for the Department of Public
3 Advocacy;

4 (g) Three and four-tenths percent (3.4%) of each court cost, up to one million
5 seven hundred thousand dollars (\$1,700,000), shall be paid into the crime
6 victims' compensation fund created in KRS 49.480;

7 (h) Seven-tenths of one percent (0.7%) of each court cost, up to three hundred
8 fifty thousand dollars (\$350,000), shall be paid to the Justice and Public
9 Safety Cabinet to defray the costs of conducting record checks on prospective
10 firearms purchasers pursuant to the Brady Handgun Violence Prevention Act
11 and for the collection, testing, and storing of DNA samples;

12 (i) Ten and one-tenth percent (10.1%) of each court cost, up to five million fifty
13 thousand dollars (\$5,050,000), deposited in the fund shall be paid to the
14 county sheriff in the county from which the court cost was received;~~and~~

15 (j) Five and one-half percent (5.5%) of each court cost, up to two million seven
16 hundred fifty thousand dollars (\$2,750,000), deposited in the fund shall be
17 paid to the county treasurer in the county from which the court cost was
18 received and shall be used by the fiscal court in that county for the purposes of
19 defraying the costs of operation of the county jail and the transportation of
20 prisoners; and

21 (k) Five percent (5%) of each court cost deposited in the fund shall be paid to
22 the Department of Kentucky State Police to be used for the operations of the
23 forensic laboratories.

24 (3) Any moneys remaining in the fund after the monthly disbursements in subsection
25 (2) of this section shall be paid into the general fund.

26 (4) Any moneys collected above the prescribed amount shall be paid into the general
27 fund.

1 ➔Section 6. This Act shall be cited as Sophie's and Kylie Jo's Law.