

1 AN ACT relating to vacating convictions for reckless homicide.

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

18 (2) ***Any person who has been convicted of a violation of KRS 507.050 and who has***
19 ***received a partial pardon from the Office of the Governor under KRS 196.045***
20 ***may file with the court in which he or she was convicted an application to have***
21 ***the judgment vacated. The application shall be filed as a motion in the original***
22 ***criminal case. The person shall be informed of the right at the time of***
23 ***adjudication.***

24 (3) A verified application to have the judgment vacated under this section shall be filed
25 no sooner than five (5) years after the completion of the person's sentence, or five
26 (5) years after the successful completion of the person's probation or parole,
27 whichever occurs later. Upon the payment of the filing fee and the filing of the

1 application, the Circuit Court clerk shall serve a notice of filing upon the office of
2 the Commonwealth's attorney or county attorney that prosecuted the case and the
3 county attorney of the county where the judgment was entered. The office of the
4 Commonwealth's attorney or county attorney that prosecuted the case shall file a
5 response within sixty (60) days after being served with the notice of filing. That time
6 period may be extended for good cause, but the hearing on the application to vacate
7 the judgment shall occur no later than one hundred twenty (120) days following the
8 filing of the application. The inability to determine the location of the crime victim
9 shall constitute good cause for an extension of time. No hearing upon the merits of
10 the application shall be scheduled until the Commonwealth's response has been filed,
11 or if no response is received, no later than one hundred twenty (120) days after the
12 filing of the application.

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

23 ~~(5)~~⁽⁴⁾ The court may order the judgment vacated, and if the judgment is vacated the
24 court shall dismiss with prejudice any charges which are eligible for expungement
25 under subsection (1) or (2) of this section or KRS 431.076 or 431.078, and order
26 expunged all records in the custody of the court and any records in the custody of
27 any other agency or official, including law enforcement records, if the court finds

1 that:

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

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

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

8 ~~(6)~~⁽⁵⁾ If the court has received a response from the office of the Commonwealth's
9 attorney or county attorney that prosecuted the case stating no objection to the
10 application to have the judgment vacated, or if one hundred twenty (120) days have
11 elapsed since the filing of the application and no response has been received, the
12 court may, without a hearing, vacate the judgment in the manner established in
13 subsection ~~(5)~~⁽⁴⁾ of this section.

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

24 ~~(8)~~⁽⁷⁾ An order vacating a conviction under this section shall not extend or revive an
25 expired statute of limitations, shall not constitute a finding of legal error regarding
26 the proceedings leading to or resulting in the conviction, shall not nullify any findings
27 of fact or conclusions of law made by the trial court or any appellate court regarding

1 the conviction, and shall not constitute a finding of innocence regarding the
2 conviction.

3 ~~(9)~~~~(8)~~ The Administrative Office of the Courts shall establish a form application to be
4 used in filing an application to have judgment vacated and records expunged.

5 ~~(10)~~~~(9)~~ The filing fee for an application to have judgment vacated and records
6 expunged shall be five hundred dollars (\$500). The first fifty dollars (\$50) of each
7 fee collected pursuant to this subsection shall be deposited into a trust and agency
8 account for deputy clerks and shall not be refundable.

9 ~~(11)~~~~(10)~~ This section shall be retroactive.