

1 AN ACT relating to expungement of criminal records.

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

3 ➔Section 1. KRS 431.076 is amended to read as follows:

4 (1) ***If a court enters an order of acquittal of criminal charges against a person, or***
5 ***enters an order dismissing criminal charges with prejudice, the court shall***
6 ***concurrently order the record expunged, unless the defendant objects to the***
7 ***expungement. The order expunging the records shall not require any action by***
8 ***the person.***

9 (2) ***If a court enters an order dismissing misdemeanor charges without prejudice,***
10 ***then twelve (12) months following the date the order was entered the court shall***
11 ***order the record expunged, unless the defendant objects to the expungement. The***
12 ***order expunging the records shall not require any action by the person.***

13 (3) A person who has been charged with a criminal offense and who has been found not
14 guilty of the offense, or against whom charges have been dismissed with prejudice
15 and not in exchange for a guilty plea to another offense, ~~for against whom felony~~
16 ~~charges originally filed in the District Court have not resulted in an indictment by~~
17 ~~the grand jury,]~~***and whose records have not been expunged pursuant to***
18 ***subsection (1) or (2) of this section*** may petition the District or Circuit Court in
19 which the charges were filed to expunge all records.

20 (4) ***A person against whom felony charges originally filed in the District Court have***
21 ***not resulted in an indictment by the grand jury may petition the District Court in***
22 ***which the charges were filed to expunge all records.***

23 (5) ~~{(2)}~~ The expungement petition shall be filed no sooner than:

24 (a) Sixty (60) days following the order of acquittal or dismissal by the court; or

25 (b) Twelve (12) months following the date of the District Court decision to hold
26 the matter to the grand jury. ~~{The petition shall be served upon the office of~~
27 ~~the Commonwealth's attorney or county attorney that prosecuted the case.~~

1 ~~[(3) Following the filing of the petition, the court may set a date for a hearing. If the~~
2 ~~court does so, it shall notify the county or Commonwealth's attorney, as appropriate,~~
3 ~~of an opportunity for a response to the expungement petition. In addition, if the~~
4 ~~criminal charge relates to the abuse or neglect of a child, the court shall also notify~~
5 ~~the Office of General Counsel of the Cabinet for Health and Family Services of an~~
6 ~~opportunity for a response to the expungement petition. The counsel for the Cabinet~~
7 ~~for Health and Family Services shall respond to the expungement petition, within~~
8 ~~twenty (20) days of receipt of the notice, which period of time shall not be extended~~
9 ~~by the court, if the Cabinet for Health and Family Services has custody of records~~
10 ~~reflecting that the person charged with the criminal offense has been determined by~~
11 ~~the cabinet or by a court under KRS Chapter 620 to be a substantiated perpetrator of~~
12 ~~child abuse or neglect. If the cabinet fails to respond to the expungement petition or~~
13 ~~if the cabinet fails to prevail, the order of expungement shall extend to the cabinet's~~
14 ~~records. If the cabinet prevails, the order of expungement shall not extend to the~~
15 ~~cabinet's records.]~~

16 **(6) If the court finds that the petition under subsection (3) of this section is properly**
17 **brought, the court shall**~~[(4)If the court finds that there are no current charges or~~
18 ~~proceedings pending relating to the matter for which the expungement is sought, the~~
19 ~~court may]~~ grant the petition and order the expunging of all records in the custody
20 of the court and any records in the custody of any other agency or official, including
21 law enforcement records.

22 **(7) If the expungement petition pertains to felony charges originally filed in the District**
23 **Court which have not resulted in an indictment by the grand jury, *the petition shall***
24 **be served upon the office of the Commonwealth's attorney or county attorney that**
25 **prosecuted the case. Following the filing of the petition, the court may set a date**
26 **for a hearing. If the court does so, it shall notify the county or Commonwealth's**
27 **attorney, as appropriate, of an opportunity for a response to the expungement**

1 petition. If the county or Commonwealth's attorney does not show good cause,
2 the court shall~~and the Circuit Court or District Court grants the motion, it shall~~
3 dismiss the charges and order the expunging of the records.

4 (8) An order of expungement pursuant to this section shall expunge all records in
5 the custody of the court and any records in the custody of any other agency or
6 official, including law enforcement records. The court shall order the expunging
7 on a form provided by the Administrative Office of the Courts. Every agency, with
8 records relating to the arrest, charge, or other matters arising out of the arrest or
9 charge, that is ordered to expunge records, shall certify to the court within sixty (60)
10 days of the entry of the expungement order, that the required expunging action has
11 been completed. All orders enforcing the expungement procedure shall also be
12 expunged.

13 (9) If an expungement is ordered under subsections (1) to (3) of this section, an
14 appellate court which issued an opinion in the case shall order the appellate case
15 file to be sealed and also direct that the version of the appellate opinion published
16 on the court's Web site be modified to avoid use of the defendant's name in the
17 case title and body of the opinion.

18 (10)~~(5)~~ If an expungement is ordered under subsection (4) of this section, an appellate
19 court which issued an opinion in the case may, upon motion of the petitioner in the
20 case, order the appellate case file to be sealed and also direct that the version of the
21 appellate opinion published on the court's Web site be modified to avoid use of the
22 petitioner's name in the case title and body of the opinion.

23 (11)~~(6)~~ After the expungement, the proceedings in the matter shall be deemed never
24 to have occurred. The court and other agencies shall delete or remove the records
25 from their computer systems so that any official state-performed background check
26 will indicate that the records do not exist. The court and other agencies shall reply
27 to any inquiry that no record exists on the matter. The person whose record is

1 expunged shall not have to disclose the fact of the record or any matter relating
2 thereto on an application for employment, credit, or other type of application.

3 **(12) Inspection of the records included in the order may thereafter be permitted by the**
4 **court only upon petition by the person who is the subject of the records and only**
5 **to those persons named in the petition.**

6 **(13) (a)~~(7)~~ Except as provided in paragraph (b) of this subsection,** this section
7 shall be retroactive.

8 **(b) Subsections (1) and (2) of this section shall apply to orders of acquittal or**
9 **dismissal filed on or after the effective date of this Act.**