

1 AN ACT relating to expungement and making an appropriation therefor.

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:

5 ***(a)*** Convicted of a Class D felony violation of KRS 17.175, 186.990, 194A.505,
6 194B.505, 217.181, 217.207, 217.208, 218A.140, 218A.1415, 218A.1416,
7 218A.1417, 218A.1418, 218A.1423, 218A.1439, 218A.282, 218A.284,
8 218A.286, 218A.320, 218A.322, 218A.324, ***218A.500***, 244.165, 286.11-057,
9 304.47-025, 324.990, 365.241, 434.155, 434.675, 434.850, 434.872, 511.040,
10 512.020, 514.030, 514.040, 514.050, 514.060, 514.065, 514.070, 514.080,
11 514.090, 514.100, 514.110, 514.120, 514.140, 514.150, 514.160, 516.030,
12 516.060, 516.090, 516.108, 517.120, 518.040, 522.040, 524.100, 525.113,
13 526.020, 526.030, 528.020, 528.040, 528.050, 530.010, or 530.050;~~[-, or -]~~

14 ***(b)*** ***Convicted of*** a series of Class D felony violations of one (1) or more statutes
15 enumerated in ***subsection (1)(a) of*** this section arising from a single
16 incident;~~[-, or who has been]~~

17 ***(c)*** Granted a full pardon~~[-,];~~ ***or***

18 ***(d)*** ***Convicted of a Class D felony, or an offense prior to January 1, 1975 which***
19 ***was punishable by not more than five (5) years' incarceration, which was***
20 ***not a violation of KRS 189A.010 or 508.032, breach of public office, a sex***
21 ***offense, or an offense committed against a child, and did not result in***
22 ***serious bodily injury or death; or of a series of felony offenses eligible***
23 ***under this paragraph;***

24 may file with the court in which he or she was convicted an application to have the
25 judgment vacated. The application shall be filed as a motion in the original criminal
26 case. The person shall be informed of the right at the time of adjudication.

27 (2) ***(a)*** A verified application ***pursuant to subsection (1)(a), (b), or (c) of this section***

1 to have the judgment vacated under this section shall be filed no sooner than
2 five (5) years after the completion of the person's sentence, or five (5) years
3 after the successful completion of the person's probation or parole, whichever
4 occurs later.

5 **(b) A verified application pursuant to subsection (1)(d) of this section to have**
6 **the judgment vacated under this section shall be filed no sooner than ten**
7 **(10) years after the completion of the person's sentence, or ten (10) years**
8 **after the successful completion of the person's probation or parole,**
9 **whichever occurs later.**

10 **(c)** Upon the payment of the filing fee and the filing of the application, the Circuit
11 Court clerk shall serve a notice of filing upon the office of the
12 Commonwealth's attorney or county attorney that prosecuted the case and the
13 county attorney of the county where the judgment was entered. The office of
14 the Commonwealth's attorney or county attorney that prosecuted the case shall
15 file a response within sixty (60) days after being served with the notice of
16 filing. That time period may be extended for good cause, but the hearing on
17 the application to vacate the judgment shall occur no later than one hundred
18 twenty (120) days following the filing of the application. The inability to
19 determine the location of the crime victim shall constitute good cause for an
20 extension of time. No hearing upon the merits of the application shall be
21 scheduled until the Commonwealth's response has been filed, or if no
22 response is received, no later than one hundred twenty (120) days after the
23 filing of the application.

24 **(d) In any case in which the Commonwealth objects that the application is**
25 **grossly incomplete, the court shall return the application to the person or**
26 **agency originating the application, and request additional information in**
27 **order to complete the application.**

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

11 (4) (a) In an application pursuant to subsection (1)(d) of this section, upon the
12 filing of the Commonwealth's response objecting to the vacating of a
13 judgment and expungement of a record, the court shall schedule a hearing
14 within one hundred twenty (120) days of the Commonwealth's response.
15 The prosecutor shall specify in the objection the reasons for believing a
16 denial of the application is justified. At the hearing at which the applicant
17 or his or her attorney must be present, the applicant must prove by a
18 preponderance of the evidence that:

19 1. Vacating the judgment and expunging the record is consistent with the
20 welfare and safety of the public;

21 2. The action is supported by his or her behavior since the conviction or
22 convictions, as evidenced that he or she has been active in
23 rehabilitative activities in prison and is living a law-abiding life since
24 release;

25 3. The vacation and expungement is warranted by the interests of justice;
26 and

27 4. Any other matter deemed appropriate or necessary by the court to

1 make a determination regarding the petition for expungement is met.

2 (b) At the hearing, the applicant may testify as to the specific adverse
 3 consequences he or she may be subject to if the application is denied. The
 4 court may hear testimony of witnesses and any other matter the court deems
 5 proper and relevant to its determination regarding the application. The
 6 Commonwealth may present proof of any extraordinary circumstances that
 7 exist to deny the application. A victim of any offense listed in the application
 8 shall have an opportunity to be heard at any hearing held under this
 9 section.

10 (c) If the court determines that circumstances warrant vacation and
 11 expungement and that the harm otherwise resulting to the applicant clearly
 12 outweighs the public interest in the criminal history record information
 13 being publicly available, then the original conviction or convictions shall be
 14 vacated and the records shall be expunged. The order of expungement shall
 15 not preclude a prosecutor's office from retaining a nonpublic record for law
 16 enforcement purposes only.

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

22 (a) For an application pursuant to subsection (1)(a), (b), or (c) of this section:

23 1. The person had not, after the effective date of this Act, ~~previously~~ had
 24 a felony conviction vacated and the record expunged pursuant to this
 25 section; and

26 ~~(b)~~ 2. The person had not in the five (5) years prior to the filing of the
 27 application to have the judgment vacated been convicted of a felony or a

1 misdemeanor; or

2 **(b) For an application pursuant to subsection (1)(d) of this section:**

3 **1. The person had not in the ten (10) years prior to the filing of the**
4 **application to have the judgment vacated been convicted of a felony or**
5 **a misdemeanor; and**

6 **2. The person has been rehabilitated and poses no significant threat of**
7 **recidivism; and**

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

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

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

27 ~~(8)~~~~(7)~~ An order vacating a conviction under this section shall not extend or revive an

1 expired statute of limitations, shall not constitute a finding of legal error regarding
 2 the proceedings leading to or resulting in the conviction, shall not nullify any
 3 findings of fact or conclusions of law made by the trial court or any appellate court
 4 regarding the conviction, and shall not constitute a finding of innocence regarding
 5 the conviction.

6 ~~(9)~~~~(8)~~ The Administrative Office of the Courts shall establish a form application to
 7 be used in filing an application to have judgment vacated and records expunged.

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

12 **(11) (a) Upon the issuance of an order vacating and expunging a conviction**
 13 **pursuant to this section, the applicant shall be charged an expungement fee**
 14 **of one hundred fifty dollars (\$150), which may be payable by an installment**
 15 **plan in accordance with KRS 534.020.**

16 **(b) When the order is issued, the court shall set a date, no sooner than eighteen**
 17 **(18) months after the date of the order, by which the defendant must comply**
 18 **with the installment payment plan. If the defendant has not completed the**
 19 **installment payment plan, he or she shall appear on that date for a show**
 20 **cause hearing pursuant to KRS 534.020.**

21 **(c) The revenues and interest from the expungement fee shall be deposited in**
 22 **the expungement fund created in Section 4 of this Act.**

23 ~~(12)~~~~(10)~~ This section shall be retroactive.

24 ➔Section 2. KRS 431.076 is amended to read as follows:

25 (1) A person who has been charged with a criminal offense and who has been found not
 26 guilty of the offense, or against whom charges have been dismissed ~~with prejudice~~
 27 ~~and not in exchange for a guilty plea to another offense, or against whom felony~~

1 charges originally filed in the District Court have not resulted in an indictment by
2 the grand jury, may petition the District or Circuit Court in which the charges were
3 filed to expunge all records.

4 (2) The expungement petition shall be filed no sooner than sixty (60) days following
5 the order of acquittal or dismissal *with prejudice* by the court, ~~or~~ twelve (12)
6 months following the date of the District Court decision to hold the matter to the
7 grand jury, *or five (5) years following the date of the order of dismissal without*
8 *prejudice*. The petition shall be served upon the office of the Commonwealth's
9 attorney or county attorney that prosecuted the case.

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

25 (4) If the court finds that there are no current charges or proceedings pending relating to
26 the matter for which the expungement is sought, the court may grant the petition
27 and order the expunging of all records in the custody of the court and any records in

1 the custody of any other agency or official, including law enforcement records. If
2 the expungement petition pertains to felony charges originally filed in the District
3 Court which have not resulted in an indictment by the grand jury, and the Circuit
4 Court or District Court grants the motion, it shall dismiss the charges and order the
5 expunging of the records. The court shall order the expunging on a form provided
6 by the Administrative Office of the Courts. Every agency, with records relating to
7 the arrest, charge, or other matters arising out of the arrest or charge, that is ordered
8 to expunge records, shall certify to the court within sixty (60) days of the entry of
9 the expungement order, that the required expunging action has been completed. All
10 orders enforcing the expungement procedure shall also be expunged.

11 (5) If an expungement is ordered under this section, an appellate court which issued an
12 opinion in the case may, upon motion of the petitioner in the case, order the
13 appellate case file to be sealed and also direct that the version of the appellate
14 opinion published on the court's Web site be modified to avoid use of the
15 petitioner's name in the case title and body of the opinion.

16 (6) After the expungement, the proceedings in the matter shall be deemed never to have
17 occurred. The court and other agencies shall delete or remove the records from their
18 computer systems so that any official state-performed background check will
19 indicate that the records do not exist. The court and other agencies shall reply to any
20 inquiry that no record exists on the matter. The person whose record is expunged
21 shall not have to disclose the fact of the record or any matter relating thereto on an
22 application for employment, credit, or other type of application.

23 (7) This section shall be retroactive.

24 ➔Section 3. KRS 431.079 is amended to read as follows:

25 (1) ~~{Beginning January 1, 2014, }~~Every petition or application filed seeking
26 expungement **of a conviction** shall include a certification of eligibility for
27 expungement. The Department of Kentucky State Police and the Administrative

1 Office of the Courts shall certify that the agencies have conducted a criminal
2 background check on the petitioner and whether or not the petitioner is eligible to
3 have the requested record expunged. The Department of Kentucky State Police shall
4 promulgate administrative regulations to implement this section, in consultation
5 with the Administrative Office of the Courts.

6 (2) *Nothing in this section shall be construed to prohibit the expungement of a case*
7 *ordered by a court of competent jurisdiction.*

8 (3) For the purposes of this section, KRS 431.073, 431.076, and 431.078,
9 "expungement" means the removal or deletion of records by the court and other
10 agencies which prevents the matter from appearing on official state-performed
11 background checks.

12 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO
13 READ AS FOLLOWS:

14 (1) *There is hereby created in the State Treasury a fund designated the*
15 *"expungement fund."*

16 (2) *The fund shall be administered by the Justice and Public Safety Cabinet.*

17 (3) *Beginning on the effective date of this Act, the revenues and interest from the*
18 *expungement fee imposed by Section 1 of this Act shall be deposited in the fund.*

19 (4) *On January 1, April 1, July 1, and October 1 of each year, the balance of the*
20 *fund shall be distributed as follows:*

21 (a) *Twenty percent (20%) shall be distributed to the Department for Libraries*
22 *and Archives;*

23 (b) *Forty percent (40%) shall be distributed to the Department of Kentucky*
24 *State Police; and*

25 (c) *Forty percent (40%) shall be equally distributed among the offices of*
26 *Commonwealth's attorneys.*

27 (5) *All interest earned on moneys in the fund shall be credited to the fund and shall*

- 1 not lapse.
- 2 (6) Notwithstanding KRS 45.229, fund amounts not expended at the close of a fiscal
- 3 year shall not lapse but shall be carried forward into the next fiscal year.
- 4 (7) Moneys deposited in the fund are hereby appropriated for the purposes set forth
- 5 in this section and shall not be appropriated or transferred by the General
- 6 Assembly for any other purposes.