

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 ***one (1) or more***~~[a]~~ Class D felony ***violations***~~[violation]~~ of KRS
 6 17.175, 186.990, 194A.505, 194B.505, 217.181, 217.207, 217.208, 218A.140,
 7 218A.1415, 218A.1416, 218A.1417, 218A.1418, 218A.1423, 218A.1439,
 8 218A.282, 218A.284, 218A.286, 218A.320, 218A.322, 218A.324, ***218A.500,***
 9 244.165, 286.11-057, 304.47-025, 324.990, 365.241, 434.155, ***434.650,***
 10 434.675, 434.850, 434.872, 511.040, 512.020, 514.030, 514.040, 514.050,
 11 514.060, 514.065, 514.070, 514.080, 514.090, 514.100, 514.110, 514.120,
 12 514.140, 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,
 14 528.050, 530.010, or 530.050;~~[, or a series of Class D felony violations of one~~
 15 ~~(1) or more statutes enumerated in this section arising from a single incident,~~
 16 ~~or who has been]~~

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

18 ***(c)*** ***Convicted of one (1) or more offenses which were not sex offenses or***
 19 ***offenses committed against a child, and did not result in serious bodily***
 20 ***injury or death, and which were Class C or Class D felonies or offenses***
 21 ***prior to January 1, 1975, that were punishable by not more than ten (10)***
 22 ***years' incarceration;***

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

26 (2) A verified application to have the judgment vacated under this section shall be filed
 27 no sooner than five (5) years after the completion of the person's sentence, or five

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

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

25 (4) The court may order the judgment vacated, and if the judgment is vacated the court
26 shall dismiss with prejudice any charges which are eligible for expungement under
27 subsection (1) of this section or KRS 431.076 or 431.078, ~~shall~~ and order

1 expunged all records in the custody of the court and any records in the custody of
 2 any other agency or official, including law enforcement records, **and shall send a**
 3 **copy of the order of expungement to the Department of Kentucky State Police,**
 4 **Criminal Identifications and Records Branch,** if the court finds that:

5 (a) **For an application pursuant to subsection (1)(a) or (b) of this section:**

6 **1.** The person had not, **after the effective date of this Act,**~~previously~~ had
 7 a felony conviction vacated and the record expunged pursuant to this
 8 section; **and**

9 ~~**2.(b)**~~ The person had not in the five (5) years prior to the filing of the
 10 application to have the judgment vacated been convicted of a felony or a
 11 misdemeanor; **or**

12 (b) **For an application pursuant to subsection (1)(c) of this section:**

13 **1. The person had not, after the effective date of this Act, had a felony**
 14 **conviction vacated and the record expunged pursuant to this section;**

15 **2. The person had not in the five (5) years prior to the filing of the**
 16 **application to have the judgment vacated been convicted of a felony or**
 17 **a misdemeanor; and**

18 **3. The offense is not a sex offense or an offense committed against a**
 19 **child, and did not result in serious bodily injury or death;** and

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

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

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

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

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

19 (9) The filing fee for an application to have judgment vacated and records expunged
20 shall be **two hundred dollars (\$200)**~~five hundred dollars (\$500)~~. The first fifty
21 dollars (\$50) of each fee collected pursuant to this subsection shall be deposited into
22 a trust and agency account for deputy clerks and shall not be refundable. **The court**
23 **shall waive the filing fee required by this section if the court finds that the person**
24 **is indigent.**

25 (10) This section shall be retroactive.

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

27 (1) A person who has been charged with a criminal offense and who has been found not

1 guilty of the offense, or against whom charges have been dismissed ~~with prejudice~~
2 and not in exchange for a guilty plea to another offense, or against whom felony
3 charges originally filed in the District Court have not resulted in an indictment by
4 the grand jury, may petition the District or Circuit Court in which the charges were
5 filed to expunge all records.

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

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

27 (4) If the court finds that there are no current charges or proceedings pending relating to

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

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

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

25 (7) This section shall be retroactive.

26 ➔Section 3. KRS 431.078 is amended to read as follows:

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

- 1 (a) A misdemeanor, a violation, or a traffic infraction not otherwise classified as a
2 misdemeanor or violation, or a series of misdemeanors, violations, or traffic
3 infractions arising from a single incident; or
- 4 (b) A series of misdemeanors, violations, or traffic infractions not arising from a
5 single incident;
- 6 may petition the court in which he was convicted for expungement of his
7 misdemeanor or violation record within that judicial district, including a record of
8 any charges for misdemeanors, violations, or traffic infractions that were dismissed
9 or amended in the criminal action. The person shall be informed of the right at the
10 time of adjudication.
- 11 (2) Except as provided in KRS 218A.275(8) and 218A.276(8), the petition shall be
12 filed no sooner than five (5) years after the completion of the person's sentence or
13 five (5) years after the successful completion of the person's probation, whichever
14 occurs later.
- 15 (3) Upon the filing of a petition, the court shall set a date for a hearing, no sooner than
16 thirty (30) days after the filing of the petition, and shall notify the county attorney;
17 the victim of the crime, if there was an identified victim; and any other person
18 whom the person filing the petition has reason to believe may have relevant
19 information related to the expungement of the record. Inability to locate the victim
20 shall not delay the proceedings in the case or preclude the holding of a hearing or
21 the issuance of an order of expungement.
- 22 (4) For a petition brought under subsection (1)(a) of this section, the court shall order
23 expunged all records in the custody of the court and any records in the custody of
24 any other agency or official, including law enforcement records, if at the hearing the
25 court finds that:
- 26 (a) The offense was not a sex offense or an offense committed against a child;
- 27 (b) The person had not in the five (5) years prior to the filing of the petition for

- 1 expungement been convicted of a felony or a misdemeanor;
- 2 (c) No proceeding concerning a felony or misdemeanor is pending or being
3 instituted against the person; and
- 4 (d) The offense is not one subject to enhancement for a second or subsequent
5 offense or the time for such an enhancement has expired.
- 6 (5) For a petition brought under subsection (1)(b) of this section, the court may order
7 expunged all records in the custody of the court and any records in the custody of
8 any other agency or official, including law enforcement records, if at the hearing the
9 court finds that:
- 10 (a) The offense was not a sex offense or an offense committed against a child;
- 11 (b) The person had not in the five (5) years prior to the filing of the petition for
12 expungement been convicted of a felony or a misdemeanor;
- 13 (c) No proceeding concerning a felony or misdemeanor is pending or being
14 instituted against the person; and
- 15 (d) The offense is not one subject to enhancement for a second or subsequent
16 offense or, if the law specifies a period for enhancement for a second or
17 subsequent offense, the time for such an enhancement has expired.
- 18 (6) Upon the entry of an order to expunge the records, the proceedings in the case shall
19 be deemed never to have occurred; the court and other agencies shall cause records
20 to be deleted or removed from their computer systems so that the matter shall not
21 appear on official state-performed background checks; the persons and the court
22 may properly reply that no record exists with respect to the persons upon any
23 inquiry in the matter; and the person whose record is expunged shall not have to
24 disclose the fact of the record or any matter relating thereto on an application for
25 employment, credit, or other type of application.
- 26 (7) The filing fee for a petition under this section shall be one hundred dollars (\$100).
27 The first fifty dollars (\$50) of each fee collected pursuant to this subsection shall be

1 deposited into a trust and agency account for deputy clerks and shall not be
2 refundable. *The court shall waive the filing fee required by this section if the*
3 *court finds that the person is indigent.*

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

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

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

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

18 (12) Any person denied an expungement prior to June 25, 2013, due to the presence of a
19 traffic infraction on his or her record may file a new petition for expungement of the
20 previously petitioned offenses, which the court shall hear and decide under the
21 terms of this section. No court costs or other fees, from the court or any other
22 agency, shall be required of a person filing a new petition under this subsection.

23 ➔Section 4. KRS 431.079 is amended to read as follows:

24 (1) [~~Beginning January 1, 2014,~~] Every petition or application filed seeking
25 expungement *of a conviction* shall include a certification of eligibility for
26 expungement. The Department of Kentucky State Police and the Administrative
27 Office of the Courts shall certify that the agencies have conducted a criminal

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

5 (2) *Notwithstanding the contents of a certification pursuant to this section, an*
6 *expungement ordered by a court of competent jurisdiction shall be carried out.*

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