

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.1411, 218A.1412,
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, 508.060, 511.040, 512.020, 514.030, 514.040,
11 514.050, 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,
13 517.120, 518.040, 520.070, 522.040, 524.100, 525.113, 526.020, 526.030,
14 528.020, 528.040, 528.050, 530.010, or 530.050;~~[-or-]~~

15 ***(b)*** Convicted of a series of Class D felony violations of one (1) or more statutes
16 enumerated in paragraph (a) of this subsection~~[section]~~ arising prior to the
17 person's first felony conviction~~[from a single incident, or who has been];~~

18 ***(c)*** Granted a full pardon~~[-];~~

19 ***(d)*** Convicted of an offense prior to January 1, 1975, which was punishable by
20 not more than five (5) years' incarceration, which was not a sex offense or
21 an offense committed against a child, and which did not result in serious
22 bodily injury or death; or of more than one (1) felony offense eligible under
23 this paragraph arising prior to the person's first felony conviction;

24 ***(e)*** Convicted of a Class D felony that would now be a misdemeanor;

25 ***(f)*** Convicted of a misdemeanor, other than a violation of KRS 508.030, which
26 was enhanced to a Class D felony; or

27 ***(g)*** Convicted of a Class D or Class C felony which was not a violent offense, a

1 *sex offense, or an offense committed against a child; or of more than one*
2 *(1) felony offense eligible under this paragraph arising prior to the person's*
3 *first felony conviction;*

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

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

12 *(b)* *A verified application pursuant to subsection (1)(g) of this section to have*
13 *the judgment vacated under this section shall be filed no sooner than ten*
14 *(10) years after the completion of the person's sentence, or ten (10) years*
15 *after the successful completion of the person's probation or parole,*
16 *whichever occurs later.*

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

1 scheduled until the Commonwealth's response has been filed, or if no
 2 response is received, no later than one hundred twenty (120) days after the
 3 filing of the application.

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

14 (4) The court may order the judgment vacated, and if the judgment is vacated the court
 15 shall dismiss with prejudice any charges which are eligible for expungement under
 16 subsection (1) of this section or KRS 431.076 or 431.078, and order expunged all
 17 records in the custody of the court and any records in the custody of any other
 18 agency or official, including law enforcement records, **and shall send a copy of the**
 19 **order of expungement to the Department of Kentucky State Police, Criminal**
 20 **Identifications and Records Branch**, if the court finds that:

21 (a) **1. For an application pursuant to subsection (1)(a), (b), (c), (d), (e), or (f)**
 22 **of this section,**~~[The person had not previously had a felony conviction~~
 23 ~~vacated and the record expunged pursuant to this section;~~

24 ~~(b)]~~the person had not in the five (5) years prior to the filing of the application to
 25 have the judgment vacated been convicted of a felony or a misdemeanor; **or**

26 **2. For an application pursuant to subsection (1)(g) of this section, the**
 27 **person had not in the ten (10) years prior to the filing of the**

1 *application to have the judgment vacated been convicted of a felony or*
2 *a misdemeanor*; and

3 ~~(b)(c)~~ No proceeding concerning a felony or misdemeanor is pending or being
4 instituted against the person.

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

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

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

27 (8) The Administrative Office of the Courts shall establish a form application to be

1 used in filing an application to have judgment vacated and records expunged.

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

8 (10) This section shall be retroactive.

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

10 (1) A person who has been charged with a criminal offense and who has been found not
11 guilty of the offense, or against whom charges have been dismissed ~~[with prejudice~~
12 ~~]and not in exchange for a guilty plea to another offense, or against whom felony~~
13 charges originally filed in the District Court have not resulted in an indictment by
14 the grand jury, may petition the District or Circuit Court in which the charges were
15 filed to expunge all records.

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

22 (3) Following the filing of the petition, the court may set a date for a hearing. If the
23 court does so, it shall notify the county or Commonwealth's attorney, as appropriate,
24 of an opportunity for a response to the expungement petition. In addition, if the
25 criminal charge relates to the abuse or neglect of a child, the court shall also notify
26 the Office of General Counsel of the Cabinet for Health and Family Services of an
27 opportunity for a response to the expungement petition. The counsel for the Cabinet

1 for Health and Family Services shall respond to the expungement petition, within
2 twenty (20) days of receipt of the notice, which period of time shall not be extended
3 by the court, if the Cabinet for Health and Family Services has custody of records
4 reflecting that the person charged with the criminal offense has been determined by
5 the cabinet or by a court under KRS Chapter 620 to be a substantiated perpetrator of
6 child abuse or neglect. If the cabinet fails to respond to the expungement petition or
7 if the cabinet fails to prevail, the order of expungement shall extend to the cabinet's
8 records. If the cabinet prevails, the order of expungement shall not extend to the
9 cabinet's records.

10 (4) If the court finds that there are no current charges or proceedings pending relating to
11 the matter for which the expungement is sought, the court may grant the petition
12 and order the expunging of all records in the custody of the court and any records in
13 the custody of any other agency or official, including law enforcement records. If
14 the expungement petition pertains to felony charges originally filed in the District
15 Court which have not resulted in an indictment by the grand jury, and the Circuit
16 Court or District Court grants the motion, it shall dismiss the charges and order the
17 expunging of the records. The court shall order the expunging on a form provided
18 by the Administrative Office of the Courts. Every agency, with records relating to
19 the arrest, charge, or other matters arising out of the arrest or charge, that is ordered
20 to expunge records, shall certify to the court within sixty (60) days of the entry of
21 the expungement order, that the required expunging action has been completed. All
22 orders enforcing the expungement procedure shall also be expunged.

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

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

8 (7) This section shall be retroactive.

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

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

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

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

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

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

25 (3) Upon the filing of a petition, the court shall set a date for a hearing, no sooner than
26 thirty (30) days after the filing of the petition, and shall notify the county attorney;
27 the victim of the crime, if there was an identified victim; and any other person

1 whom the person filing the petition has reason to believe may have relevant
2 information related to the expungement of the record. Inability to locate the victim
3 shall not delay the proceedings in the case or preclude the holding of a hearing or
4 the issuance of an order of expungement.

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

- 9 (a) The offense was not a sex offense or an offense committed against a child;
10 (b) The person had not in the five (5) years prior to the filing of the petition for
11 expungement been convicted of a felony or a misdemeanor;
12 (c) No proceeding concerning a felony or misdemeanor is pending or being
13 instituted against the person; and
14 (d) The offense is not one subject to enhancement for a second or subsequent
15 offense or, if the law specifies a period for enhancement for a second or
16 subsequent offense, the time for such an enhancement has expired.

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

- 21 (a) The offense was not a sex offense or an offense committed against a child;
22 (b) The person had not in the five (5) years prior to the filing of the petition for
23 expungement been convicted of a felony or a misdemeanor;
24 (c) No proceeding concerning a felony or misdemeanor is pending or being
25 instituted against the person; and
26 (d) The offense is not one subject to enhancement for a second or subsequent
27 offense or the time for such an enhancement has expired.

- 1 (6) Upon the entry of an order to expunge the records, the proceedings in the case shall
2 be deemed never to have occurred; the court and other agencies shall cause records
3 to be deleted or removed from their computer systems so that the matter shall not
4 appear on official state-performed background checks; the persons and the court
5 may properly reply that no record exists with respect to the persons upon any
6 inquiry in the matter; and the person whose record is expunged shall not have to
7 disclose the fact of the record or any matter relating thereto on an application for
8 employment, credit, or other type of application.
- 9 (7) The filing fee for a petition under this section shall be one hundred dollars (\$100).
10 The first fifty dollars (\$50) of each fee collected pursuant to this subsection shall be
11 deposited into a trust and agency account for deputy clerks and shall not be
12 refundable.
- 13 (8) Copies of the order shall be sent to each agency or official named therein.
- 14 (9) Inspection of the records included in the order may thereafter be permitted by the
15 court only upon petition by the person who is the subject of the records and only to
16 those persons named in the petition.
- 17 (10) This section shall be deemed to be retroactive, and any person who has been
18 convicted of a misdemeanor prior to July 14, 1992, may petition the court in which
19 he was convicted, or if he was convicted prior to the inception of the District Court
20 to the District Court in the county where he now resides, for expungement of the
21 record of one (1) misdemeanor offense or violation or a series of misdemeanor
22 offenses or violations arising from a single incident, provided that the offense was
23 not one specified in subsection (4) and that the offense was not the precursor
24 offense of a felony offense for which he was subsequently convicted. This section
25 shall apply only to offenses against the Commonwealth of Kentucky.
- 26 (11) As used in this section, "violation" has the same meaning as in KRS 500.080.
- 27 (12) Any person denied an expungement prior to June 25, 2013, due to the presence of a

1 traffic infraction on his or her record may file a new petition for expungement of the
2 previously petitioned offenses, which the court shall hear and decide under the
3 terms of this section. No court costs or other fees, from the court or any other
4 agency, shall be required of a person filing a new petition under this subsection.

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

6 (1) ~~[Beginning January 1, 2014,]~~Every petition or application filed seeking
7 expungement **of a conviction** shall include a certification of eligibility for
8 expungement. The Department of Kentucky State Police and the Administrative
9 Office of the Courts shall certify that the agencies have conducted a criminal
10 background check on the petitioner and whether or not the petitioner is eligible to
11 have the requested record expunged. The Department of Kentucky State Police shall
12 promulgate administrative regulations to implement this section, in consultation
13 with the Administrative Office of the Courts.

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

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