

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 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, 514.030,
9 514.040, 514.050, 514.060, 514.065, 514.070, 514.080, 514.090, 514.100, 514.110,
10 514.120, 514.140, 514.150, 514.160, 516.030, 516.060, 516.090, 516.108, 517.120,
11 518.040, 522.040, 524.100, 525.113, 526.020, 526.030, 528.020, 528.040, 528.050,
12 530.010, or 530.050, or a series of Class D felony violations of one (1) or more
13 statutes enumerated in this section arising from a single incident, or who has been
14 granted a full pardon, may file with the court in which he or she was convicted an
15 application to have the judgment vacated. The application shall be filed as a motion
16 in the original criminal case. The person shall be informed of the right at the time of
17 adjudication.

18 (2) A verified application to have the judgment vacated under this section shall be filed
19 no sooner than five (5) years after the completion of the person's sentence, or five
20 (5) years after the successful completion of the person's probation or parole,
21 whichever occurs later. Upon the payment of the filing fee and the filing of the
22 application, the Circuit Court clerk shall serve a notice of filing upon the office of
23 the Commonwealth's attorney or county attorney that prosecuted the case and the
24 county attorney of the county where the judgment was entered. The office of the
25 Commonwealth's attorney or county attorney that prosecuted the case shall file a
26 response within sixty (60) days after being served with the notice of filing. That
27 time period may be extended for good cause, but the hearing on the application to

1 vacate the judgment shall occur no later than one hundred twenty (120) days
2 following the filing of the application. The inability to determine the location of the
3 crime victim shall constitute good cause for an extension of time. No hearing upon
4 the merits of the application shall be scheduled until the Commonwealth's response
5 has been filed, or if no response is received, no later than one hundred twenty (120)
6 days after the filing of the application.

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

17 (4) 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) The person had not previously had a felony conviction vacated and the record
23 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; and

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

- 1 (5) If the court has received a response from the office of the Commonwealth's attorney
2 or county attorney that prosecuted the case stating no objection to the application to
3 have the judgment vacated, or if one hundred twenty (120) days have elapsed since
4 the filing of the application and no response has been received, the court may,
5 without a hearing, vacate the judgment in the manner established in subsection (4)
6 of this section.
- 7 (6) Upon entry of an order vacating and expunging a conviction, the original conviction
8 shall be vacated and the record shall be expunged. The court and other agencies
9 shall cause records to be deleted or removed from their computer systems so that
10 the matter shall not appear on official state-performed background checks. The
11 court and other agencies shall reply to any inquiry that no record exists on the
12 matter. The person whose record is expunged shall not have to disclose the fact of
13 the record or any matter relating thereto on an application for employment, credit, or
14 other type of application. If the person is not prohibited from voting for any other
15 reason, the person's ability to vote shall be restored and the person may register to
16 vote.
- 17 (7) An order vacating a conviction under this section shall not extend or revive an
18 expired statute of limitations, shall not constitute a finding of legal error regarding
19 the proceedings leading to or resulting in the conviction, shall not nullify any
20 findings of fact or conclusions of law made by the trial court or any appellate court
21 regarding the conviction, and shall not constitute a finding of innocence regarding
22 the conviction.
- 23 (8) The Administrative Office of the Courts shall establish a form application to be
24 used in filing an application to have judgment vacated and records expunged.
- 25 (9) Upon the issuance of an order vacating and expunging a conviction pursuant to
26 this section, the applicant shall be charged an expungement fee as set by the
27 court, which shall be not less than twenty dollars (\$20) and not more than five

1 **hundred dollars (\$500). Ten percent (10%)**~~[The filing fee for an application to~~
2 ~~have judgment vacated and records expunged shall be five hundred dollars (\$500).~~
3 ~~The first fifty dollars (\$50)]~~ of each fee collected pursuant to this subsection shall
4 be deposited into a trust and agency account for deputy clerks~~[and shall not be~~
5 refundable].

6 (10) This section shall be retroactive.