

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 sex offense or an offense committed against a child, and did not result***  
21 ***in serious bodily injury or death; or of a series of felony offenses eligible***  
22 ***under this paragraph;***

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)** A verified application **pursuant to subsection (1)(a), (b), or (c) of this section**  
27 to have the judgment vacated under this section shall be filed no sooner than

1 five (5) years after the completion of the person's sentence, or five (5) years  
2 after the successful completion of the person's probation or parole, whichever  
3 occurs later.

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

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

23 (3) Upon the filing of the Commonwealth's response to an application, or if no response  
24 is received, no later than one hundred twenty (120) days after the filing of the  
25 application, the court shall set a date for a hearing and the Circuit Court clerk shall  
26 notify the office of the Commonwealth's attorney or county attorney that prosecuted  
27 the case. The office of the Commonwealth's attorney or county attorney that

1 prosecuted the case shall notify the victim of the crime, if there was an identified  
 2 victim. The Commonwealth's attorney or county attorney shall be authorized to  
 3 obtain without payment of any fee information from the Transportation Cabinet  
 4 regarding the crime victim's address on file regarding any vehicle operator's license  
 5 issued to that person.

6 (4) The court may, **in its discretion**, order the judgment vacated, and if the judgment is  
 7 vacated the court shall dismiss with prejudice any charges which are eligible for  
 8 expungement under subsection (1) of this section or KRS 431.076 or 431.078, and  
 9 order expunged all records in the custody of the court and any records in the custody  
 10 of any other agency or official, including law enforcement records, if the court finds  
 11 that:

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

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

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

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

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

23 **2. The person has been rehabilitated;** and

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

26 (5) If the court has received a response from the office of the Commonwealth's attorney  
 27 or county attorney that prosecuted the case stating no objection to the application to

1 have the judgment vacated, or if one hundred twenty (120) days have elapsed since  
2 the filing of the application and no response has been received from the victim or  
3 the office of the Commonwealth's attorney or county attorney that prosecuted the  
4 case, the court may, without a hearing, vacate the judgment in the manner  
5 established in subsection (4) of this section.

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

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

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

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

1 (10) (a) Upon the issuance of an order vacating and expunging a conviction  
 2 pursuant to this section, the applicant shall be charged an expungement fee  
 3 of four hundred fifty dollars (\$450), which may be payable by an  
 4 installment plan in accordance with KRS 534.020.

5 (b) Twelve (12) months after the date the order is issued, interest shall begin to  
 6 accrue at the rate specified in KRS 360.040.

7 (c) Five-ninths (5/9) of the revenues and interest from the expungement fee  
 8 shall be deposited in the expungement fund created in Section 4 of this Act.

9 (11)~~(10)~~ This section shall be retroactive.

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

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

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

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

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

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

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

1 petitioner's name in the case title and body of the opinion.

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

9 (7) This section shall be retroactive.

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

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

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

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

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

27 **(1) There is hereby created in the State Treasury a fund designated the**

1 "expungement fund."

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

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

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

7 (a) Twenty percent (20%) shall be distributed to the Department for Libraries  
8 and Archives;

9 (b) Forty percent (40%) shall be distributed to the Department of Kentucky  
10 State Police; and

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

13 (5) All interest earned on moneys in the fund shall be credited to the fund and shall  
14 not lapse.

15 (6) Notwithstanding KRS 45.229, fund amounts not expended at the close of a fiscal  
16 year shall not lapse but shall be carried forward into the next fiscal year.

17 (7) Moneys deposited in the fund are hereby appropriated for the purposes set forth  
18 in this section and shall not be appropriated or transferred by the General  
19 Assembly for any other purposes.