

1 AN ACT relating to expungement of criminal records.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO  
4 READ AS FOLLOWS:

5 *(1) A conviction shall be subject to automatic expungement if:*

6 *(a) The conviction was for a misdemeanor, a violation, or a traffic infraction*  
7 *not otherwise classified as a misdemeanor or violation, or for a Class D*  
8 *felony with a maximum sentence of three (3) years or less;*

9 *(b) The offense was not a sex offense or an offense committed against a child;*

10 *(c) Five (5) years have elapsed since entry of the judgment;*

11 *(d) The sentence, including all financial obligations, has been completed; and*

12 *(e) The person had not, in the most recent five (5) years, been convicted of a*  
13 *felony.*

14 *(2) The Administrative Office of the Courts shall, on the first day of each month,*  
15 *transmit to the Circuit Court clerk in the judicial district where the conviction*  
16 *occurred the record of any conviction eligible for automatic expungement under*  
17 *subsection (1) of this section.*

18 *(3) Within thirty (30) days of receiving a record under subsection (2) of this section,*  
19 *the court in which the conviction occurred shall order expunged all records in*  
20 *the custody of the court and any records in the custody of any other agency or*  
21 *official, including law enforcement records, and shall transmit copies of the*  
22 *order to the Administrative Office of the Courts and to the Department of*  
23 *Kentucky State Police, Criminal Identifications and Records Branch.*

24 *(4) Upon the entry of an order to expunge the records:*

25 *(a) The proceedings in the case shall be deemed never to have occurred;*

26 *(b) The court and other agencies shall cause records to be deleted or removed*  
27 *from their computer systems so that the matter shall not appear on official*

1 state-performed background checks;

2 (c) The court and the person whose record is expunged may properly reply that  
 3 no record exists with respect to the person upon any inquiry in the matter;  
 4 and

5 (d) The person whose record is expunged shall not have to disclose the fact of  
 6 the record or any matter relating thereto on an application for employment,  
 7 credit, or other type of application.

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

11 (6) This section shall be retroactive.

12 ➔Section 2. KRS 431.078 is amended to read as follows:

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

14 (a) A misdemeanor, a violation, ~~or~~ a traffic infraction not otherwise classified as  
 15 a misdemeanor or violation, or a Class D felony with a maximum sentence  
 16 of three (3) years or less, which has not been automatically expunged  
 17 pursuant to Section 1 of this Act~~[or a series of misdemeanors, violations, or~~  
 18 ~~traffic infractions arising from a single incident]; or~~

19 (b) A series of offenses eligible under paragraph (a) of this  
 20 subsection~~[misdemeanors, violations, or traffic infractions not arising from a~~  
 21 ~~single incident];~~

22 may petition the court in which he or she was convicted for expungement of his or  
 23 her~~[misdemeanor or violation]~~ record within that judicial district~~[, including a~~  
 24 ~~record of any charges for misdemeanors, violations, or traffic infractions that were~~  
 25 ~~dismissed or amended in the criminal action. The person shall be informed of the~~  
 26 ~~right at the time of adjudication].~~

27 (2) ~~[Except as provided in KRS 218A.275(8) and 218A.276(8),]~~The petition shall be

1 filed no sooner than five (5) years after the entry of judgment in the  
 2 case~~[completion of the person's sentence or five (5) years after the successful~~  
 3 ~~completion of the person's probation, whichever occurs later].~~

4 (3) ~~[Upon the filing of a petition, the court shall set a date for a hearing, no sooner than~~  
 5 ~~thirty (30) days after the filing of the petition, and shall notify the county attorney;~~  
 6 ~~the victim of the crime, if there was an identified victim; and any other person~~  
 7 ~~whom the person filing the petition has reason to believe may have relevant~~  
 8 ~~information related to the expungement of the record. Inability to locate the victim~~  
 9 ~~shall not delay the proceedings in the case or preclude the holding of a hearing or~~  
 10 ~~the issuance of an order of expungement.~~

11 ~~(4) For a petition brought under subsection (1)(a) of this section, ]~~The court shall order  
 12 expunged all records in the custody of the court and any records in the custody of  
 13 any other agency or official, including law enforcement records, if ~~[at the hearing~~  
 14 ~~]the court finds that:~~

15 (a) The offense was not a sex offense or an offense committed against a child;

16 (b) Five (5) years have elapsed since entry of the judgment;

17 (c) The sentence, including all financial obligations, has been completed; and

18 (d) ~~[(a) The offense was not a sex offense or an offense committed against a~~  
 19 ~~child;~~

20 ~~(b) ]~~The person had not in the five (5) years prior to the filing of the petition for  
 21 expungement been convicted of a felony~~[or a misdemeanor;~~

22 ~~(c) No proceeding concerning a felony or misdemeanor is pending or being~~  
 23 ~~instituted against the person; and~~

24 ~~(d) The offense is not one subject to enhancement for a second or subsequent~~  
 25 ~~offense or the time for such an enhancement has expired.~~

26 ~~(5) For a petition brought under subsection (1)(b) of this section, the court may order~~  
 27 ~~expunged all records in the custody of the court and any records in the custody of~~

1       ~~any other agency or official, including law enforcement records, if at the hearing the~~  
2       ~~court finds that:~~

3       ~~(a) The offense was not a sex offense or an offense committed against a child;~~

4       ~~(b) The person had not in the five (5) years prior to the filing of the petition for~~  
5       ~~expungement been convicted of a felony or a misdemeanor;~~

6       ~~(c) No proceeding concerning a felony or misdemeanor is pending or being~~  
7       ~~instituted against the person; and~~

8       ~~(d) The offense is not one subject to enhancement for a second or subsequent~~  
9       ~~offense or the time for such an enhancement has expired].~~

10     ~~(4)~~~~(6)~~     Upon the entry of an order to expunge the records, the proceedings in the case  
11       shall be deemed never to have occurred; the court and other agencies shall cause  
12       records to be deleted or removed from their computer systems so that the matter  
13       shall not appear on official state-performed background checks; ~~the~~~~persons and~~  
14       ~~the~~ court ***and the person whose record is expunged*** may properly reply that no  
15       record exists with respect to the ***person***~~persons~~ upon any inquiry in the matter;  
16       and the person whose record is expunged shall not have to disclose the fact of the  
17       record or any matter relating thereto on an application for employment, credit, or  
18       other type of application.

19     ~~(5)~~~~(7)~~     ***There shall be no***~~The~~ filing fee for a petition under this section ~~shall be one~~  
20       ~~hundred dollars (\$100). The first fifty dollars (\$50) of each fee collected pursuant to~~  
21       ~~this subsection shall be deposited into a trust and agency account for deputy clerks~~  
22       ~~and shall not be refundable].~~

23     ~~(6)~~~~(8)~~     Copies of the order shall be sent to each agency or official named therein ***and***  
24       ***to the Department of Kentucky State Police, Criminal Identifications and Records***  
25       ***Branch.***

26     ~~(7)~~~~(9)~~     Inspection of the records included in the order may thereafter be permitted by  
27       the court only upon petition by the person who is the subject of the records and only

1 to those persons named in the petition.

2 ~~(8)[(10)] This section shall be [deemed to be ]retroactive[, and any person who has~~  
3 ~~been convicted of a misdemeanor prior to July 14, 1992, may petition the court in~~  
4 ~~which he was convicted, or if he was convicted prior to the inception of the District~~  
5 ~~Court to the District Court in the county where he now resides, for expungement of~~  
6 ~~the record of one (1) misdemeanor offense or violation or a series of misdemeanor~~  
7 ~~offenses or violations arising from a single incident, provided that the offense was~~  
8 ~~not one specified in subsection (4) and that the offense was not the precursor~~  
9 ~~offense of a felony offense for which he was subsequently convicted. This section~~  
10 ~~shall apply only to offenses against the Commonwealth of Kentucky.~~

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

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

17 ➔Section 3. KRS 431.073 is amended to read as follows:

18 (1) Any person who has been:

19 (a) Convicted of a Class D felony violation of KRS 17.175, 186.990, 194A.505,  
20 194B.505, 217.181, 217.207, 217.208, 218A.140, 218A.1415, 218A.1416,  
21 218A.1417, 218A.1418, 218A.1423, 218A.1439, 218A.282, 218A.284,  
22 218A.286, 218A.320, 218A.322, 218A.324, 218A.500, 244.165, 286.11-057,  
23 304.47-025, 324.990, 365.241, 434.155, 434.675, 434.850, 434.872, 511.040,  
24 512.020, 514.030, 514.040, 514.050, 514.060, 514.065, 514.070, 514.080,  
25 514.090, 514.100, 514.110, 514.120, 514.140, 514.150, 514.160, 516.030,  
26 516.060, 516.090, 516.108, 517.120, 518.040, 522.040, 524.100, 525.113,  
27 526.020, 526.030, 528.020, 528.040, 528.050, 530.010, or 530.050;

1 (b) Convicted of a series of Class D felony violations of one (1) or more statutes  
2 enumerated in paragraph (a) of this subsection arising from a single incident;

3 (c) Granted a full pardon; or

4 (d) Convicted of:

5 1. A Class D felony, which:

6 a. Was not:

7 i. A violation of KRS 189A.010, 508.032, or 519.055;

8 ii. An abuse of public office;

9 iii. A sex offense;

10 iv. An offense committed against a child; or

11 v. An offense with a maximum sentence of three (3) years or  
12 less; and

13 b. Did not result in serious bodily injury or death;~~or~~

14 2. An offense prior to January 1, 1975, which:

15 a. Was punishable by not more than five (5) years' incarceration;~~;~~  
16 ~~which~~

17 b. Was not an~~[a violation of KRS 189A.010, 508.032, or 519.055,]~~  
18 abuse of public office, a sex offense, or an offense committed  
19 against a child;~~;~~ and

20 c. Did not result in serious bodily injury or death; or ~~of~~

21 3. A series of felony offenses eligible under this paragraph;  
22 may file with the court in which he or she was convicted an application to have the  
23 judgment vacated. The application shall be filed as a motion in the original criminal  
24 case. The person shall be informed of the right at the time of adjudication.

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

1           probation or parole, whichever occurs later.

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

16          (c) In any case in which the Commonwealth objects that the application is grossly  
17          incomplete, the court shall order the person or agency originating the  
18          application to supplement the application.

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

1 issued to that person.

2 (4) (a) In an application pursuant to subsection (1)(d) of this section, upon the filing  
3 of the Commonwealth's response objecting to the vacating of a judgment and  
4 expungement of a record, the court shall schedule a hearing within one  
5 hundred twenty (120) days of the Commonwealth's response. The prosecutor  
6 shall specify in the objection the reasons for believing a denial of the  
7 application is justified. At the hearing at which the applicant or his or her  
8 attorney must be present, the applicant must prove by clear and convincing  
9 evidence that:

- 10 1. Vacating the judgment and expunging the record is consistent with the  
11 welfare and safety of the public;
- 12 2. The action is supported by his or her behavior since the conviction or  
13 convictions, as evidenced that he or she has been active in rehabilitative  
14 activities in prison and is living a law-abiding life since release;
- 15 3. The vacation and expungement is warranted by the interests of justice;  
16 and
- 17 4. Any other matter deemed appropriate or necessary by the court to make  
18 a determination regarding the petition for expungement is met.

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

26 (c) If the court determines that circumstances warrant vacation and expungement  
27 and that the harm otherwise resulting to the applicant clearly outweighs the



1 public interest in the criminal history record information being publicly  
2 available, then the original conviction or convictions shall be vacated and the  
3 records shall be expunged. The order of expungement shall not preclude a  
4 prosecutor's office from retaining a nonpublic record for law enforcement  
5 purposes only.

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

12 (a) The person had not, after June 27, 2019, had a felony conviction vacated and  
13 the record expunged pursuant to this section;

14 (b) The person had not in the five (5) years prior to the filing of the application to  
15 have the judgment vacated been convicted of a felony or a misdemeanor;

16 (c) No proceeding concerning a felony or misdemeanor is pending or being  
17 instituted against the person; and

18 (d) For an application pursuant to subsection (1)(d) of this section, the person has  
19 been rehabilitated and poses no significant threat of recidivism.

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

27 (7) Upon entry of an order vacating and expunging a conviction, the original conviction

1 shall be vacated and, upon full payment of the fee in subsection (11) of this section,  
2 the record shall be expunged. The court and other agencies shall cause records to be  
3 deleted or removed from their computer systems so that the matter shall not appear  
4 on official state-performed background checks. The court and other agencies shall  
5 reply to any inquiry that no record exists on the matter. The person whose record is  
6 expunged shall not have to disclose the fact of the record or any matter relating  
7 thereto on an application for employment, credit, or other type of application. If the  
8 person is not prohibited from voting for any other reason, the person's ability to vote  
9 shall be restored and the person may register to vote.

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

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

18 (10) The filing fee for an application to have judgment vacated and records expunged  
19 shall be fifty dollars (\$50), which shall be deposited into a trust and agency account  
20 for deputy clerks and shall not be refundable.

21 (11) (a) Upon the issuance of an order vacating and expunging a conviction pursuant  
22 to this section, the applicant shall be charged an expungement fee of two  
23 hundred fifty dollars (\$250), which may be payable by an installment plan in  
24 accordance with KRS 534.020.

25 (b) When the order is issued, the court shall set a date, no sooner than eighteen  
26 (18) months after the date of the order, by which the defendant must comply  
27 with the installment payment plan. The applicant shall be given notice of the

1 total amount due, the payment frequency, and the date by which all payments  
2 must be made. The notice shall state that the expungement cannot be  
3 completed until full payment is received, and that if the applicant has not  
4 completed the installment payment plan by the scheduled date, he or she shall  
5 appear on that date to show good cause as to why he or she is unable to satisfy  
6 the obligations. Notwithstanding provisions of KRS 534.020 to the contrary,  
7 no applicant shall be ordered to jail for failure to complete an installment plan  
8 ordered pursuant to this section.

9 (c) The revenues and interest from the expungement fee shall be deposited in the  
10 expungement fund created in KRS 431.0795.

11 (12) This section shall be retroactive.

12 ➔Section 4. This Act may be cited as the Redemption Act.