

1 AN ACT relating to expungement.

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

3 ➔Section 1. KRS 431.078 is amended to read as follows:

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

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

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

10 may petition the court in which he or she was convicted for expungement of his or
11 her misdemeanor or violation record within that judicial district, including a record
12 of any charges for misdemeanors, violations, or traffic infractions that were
13 dismissed or amended in the criminal action. The person shall be informed of the
14 right at the time of adjudication.

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

19 (3) Upon the filing of a petition, the court shall set a date for a hearing, no sooner than
20 thirty (30) days after the filing of the petition, and shall notify the county attorney;
21 the victim of the crime, if there was an identified victim; and any other person
22 whom the person filing the petition has reason to believe may have relevant
23 information related to the expungement of the record. Inability to locate the victim
24 shall not delay the proceedings in the case or preclude the holding of a hearing or
25 the issuance of an order of expungement.

26 (4) For a petition brought under subsection (1)(a) of this section, the court shall 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) 1. If the offense is subject to enhancement to a felony, the person had
5 not in the ten (10) years prior to the filing of the petition for
6 expungement been convicted of a felony or a misdemeanor; or

7 2. The person had not in the five (5) years prior to the filing of the petition
8 for expungement been convicted of a felony or a misdemeanor;

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

11 (d) 1. The offense is not one subject to enhancement for a second or
12 subsequent offense; or

13 2. If the offense is subject to enhancement for a second or subsequent
14 offense:

15 a. If the law does not specify a period for enhancement:

16 i. If the offense is subject to enhancement to a felony, ten
17 (10) years have elapsed from the date of the offense; or

18 ii. Five (5) years have elapsed from the date of the offense; or

19 b. If the law specifies a period for enhancement for a second or
20 subsequent offense, the time for such an enhancement has expired.

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

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

26 (b) 1. If the offense is subject to enhancement to a felony, the person had
27 not in the ten (10) years prior to the filing of the petition for

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

- 1 (8) Copies of the order shall be sent to each agency or official named therein.
- 2 (9) Inspection of the records included in the order may thereafter be permitted by the
3 court only upon petition by the person who is the subject of the records and only to
4 those persons named in the petition.
- 5 (10) This section shall be deemed to be retroactive, and any person who has been
6 convicted of a misdemeanor prior to July 14, 1992, may petition the court in which
7 he was convicted, or if he was convicted prior to the inception of the District Court
8 to the District Court in the county where he now resides, for expungement of the
9 record of one (1) misdemeanor offense or violation or a series of misdemeanor
10 offenses or violations arising from a single incident, provided that the offense was
11 not one specified in subsection (4) and that the offense was not the precursor
12 offense of a felony offense for which he was subsequently convicted. This section
13 shall apply only to offenses against the Commonwealth of Kentucky.
- 14 (11) As used in this section, "violation" has the same meaning as in KRS 500.080.
- 15 (12) Any person denied an expungement prior to June 25, 2013, due to the presence of a
16 traffic infraction on his or her record may file a new petition for expungement of the
17 previously petitioned offenses, which the court shall hear and decide under the
18 terms of this section. No court costs or other fees, from the court or any other
19 agency, shall be required of a person filing a new petition under this subsection.