

1 AN ACT relating to criminal procedure.

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;

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

16 (c) Granted a full pardon; or

17 (d) Convicted of a Class D felony, or an offense prior to January 1, 1975 which  
18 was punishable by not more than five (5) years' incarceration, which was not a  
19 violation of KRS 189A.010, 508.032, or 519.055, abuse of public office, a sex  
20 offense, or an offense committed against a child, and did not result in serious  
21 bodily injury or death; or of multiple felony offenses eligible under this  
22 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 to have the judgment vacated under this section shall be  
27 filed no sooner than five (5) years after the completion of the person's

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

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

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

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

1           Transportation Cabinet regarding the crime victim's address on file regarding any  
2           vehicle operator's license issued to that person.

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

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

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

27       (c) If the court determines that circumstances warrant vacation and expungement

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

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

- 15 (a) The person had not in the five (5) years prior to the filing of the application to  
16 have the judgment vacated been convicted of a felony or a misdemeanor;
- 17 (b) No proceeding concerning a felony or misdemeanor is pending ~~for being~~  
18 ~~instituted~~ against the person; and
- 19 (c) For an application pursuant to subsection (1)(d) of this section, the person has  
20 been rehabilitated and poses no significant threat of recidivism.

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

- 1 (7) Upon entry of an order vacating and expunging a conviction, the original conviction  
2 shall be vacated and, upon full payment of the fee in subsection (11) of this section,  
3 the record shall be expunged. The court and other agencies shall cause records to be  
4 deleted or removed from their computer systems so that the matter shall not appear  
5 on official state-performed background checks. The court and other agencies shall  
6 reply to any inquiry that no record exists on the matter. The person whose record is  
7 expunged shall not have to disclose the fact of the record or any matter relating  
8 thereto on an application for employment, credit, or other type of application. If the  
9 person is not prohibited from voting for any other reason, the person's ability to  
10 vote shall be restored and the person may register to vote.
- 11 (8) An order vacating a conviction under this section shall not extend or revive an  
12 expired statute of limitations, shall not constitute a finding of legal error regarding  
13 the proceedings leading to or resulting in the conviction, shall not nullify any  
14 findings of fact or conclusions of law made by the trial court or any appellate court  
15 regarding the conviction, and shall not constitute a finding of innocence regarding  
16 the conviction.
- 17 (9) The Administrative Office of the Courts shall establish a form application to be  
18 used in filing an application to have judgment vacated and records expunged.
- 19 (10) The filing fee for an application to have judgment vacated and records expunged  
20 shall be fifty dollars (\$50), which shall be deposited into a trust and agency account  
21 for deputy clerks and shall not be refundable.
- 22 (11) (a) Upon the issuance of an order vacating and expunging a conviction pursuant  
23 to this section, the applicant shall be charged an expungement fee of two  
24 hundred fifty dollars (\$250), which may be payable by an installment plan in  
25 accordance with KRS 534.020.
- 26 (b) When the order is issued, the court shall set a date, no sooner than eighteen  
27 (18) months after the date of the order, by which the defendant must comply

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

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

12 (12) This section shall be retroactive.

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

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

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

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

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

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

1 occurs later.

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

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

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

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

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

18 (d) The offense is not one subject to enhancement for a second or subsequent  
19 offense or, **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  
24 the court finds that:

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

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

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



1 ~~not one specified in subsection (4) and that the offense was not the precursor~~  
2 ~~offense of a felony offense for which he was subsequently convicted. This section~~  
3 ~~shall apply only to offenses against the Commonwealth of Kentucky].~~

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

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

10 ➔Section 3. KRS 532.080 is amended to read as follows:

11 (1) When a defendant is found to be a persistent felony offender, the jury, in lieu of the  
12 sentence of imprisonment assessed under KRS 532.060 for the crime of which such  
13 person presently stands convicted, shall fix a sentence of imprisonment as  
14 authorized by subsection (5) or (6) of this section. When a defendant is charged  
15 with being a persistent felony offender, the determination of whether or not he or  
16 she is such an offender and the punishment to be imposed pursuant to subsection  
17 (5) or (6) of this section shall be determined in a separate proceeding from that  
18 proceeding which resulted in his or her last conviction. Such proceeding shall be  
19 conducted before the court sitting with the jury that found the defendant guilty of  
20 his or her most recent offense unless the court for good cause discharges that jury  
21 and impanels a new jury for that purpose.

22 (2) A persistent felony offender in the second degree is a person who is more than  
23 twenty-one (21) years of age and who stands convicted of a felony after having  
24 been convicted of one (1) previous felony. As used in this provision, a previous  
25 felony conviction is a conviction of a felony in this state or conviction of a crime in  
26 any other jurisdiction provided:

27 (a) That a sentence to a term of imprisonment of one (1) year or more or a

1 sentence to death was imposed therefor; and

2 (b) That the offender was over the age of eighteen (18) years at the time the  
3 offense was committed; and

4 (c) That the offender:

5 1. Completed service of the sentence imposed on the previous felony  
6 conviction within five (5) years prior to the date of commission of the  
7 felony for which he or she now stands convicted; or

8 2. Was on probation, parole, postincarceration supervision, conditional  
9 discharge, conditional release, furlough, appeal bond, or any other form  
10 of legal release from any of the previous felony convictions at the time  
11 of commission of the felony for which he or she now stands convicted;  
12 or

13 3. Was discharged from probation, parole, postincarceration supervision,  
14 conditional discharge, conditional release, or any other form of legal  
15 release on any of the previous felony convictions within five (5) years  
16 prior to the date of commission of the felony for which he or she now  
17 stands convicted; or

18 4. Was in custody from the previous felony conviction at the time of  
19 commission of the felony for which he or she now stands convicted; or

20 5. Had escaped from custody while serving any of the previous felony  
21 convictions at the time of commission of the felony for which he or she  
22 now stands convicted.

23 (3) A persistent felony offender in the first degree is a person who is more than twenty-  
24 one (21) years of age and who stands convicted of a felony after having been  
25 convicted of two (2) or more felonies, or one (1) or more felony sex crimes against  
26 a minor as defined in KRS 17.500, and now stands convicted of any one (1) or more  
27 felonies. As used in this provision, a previous felony conviction is a conviction of a

1 felony in this state or conviction of a crime in any other jurisdiction provided:

2 (a) That a sentence to a term of imprisonment of one (1) year or more or a  
3 sentence to death was imposed therefor; and

4 (b) That the offender was over the age of eighteen (18) years at the time the  
5 offense was committed; and

6 (c) That the offender:

7 1. Completed service of the sentence imposed on any of the previous  
8 felony convictions within five (5) years prior to the date of the  
9 commission of the felony for which he or she now stands convicted; or

10 2. Was on probation, parole, postincarceration supervision, conditional  
11 discharge, conditional release, furlough, appeal bond, or any other form  
12 of legal release from any of the previous felony convictions at the time  
13 of commission of the felony for which he or she now stands convicted;  
14 or

15 3. Was discharged from probation, parole, postincarceration supervision,  
16 conditional discharge, conditional release, or any other form of legal  
17 release on any of the previous felony convictions within five (5) years  
18 prior to the date of commission of the felony for which he or she now  
19 stands convicted; or

20 4. Was in custody from the previous felony conviction at the time of  
21 commission of the felony for which he or she now stands convicted; or

22 5. Had escaped from custody while serving any of the previous felony  
23 convictions at the time of commission of the felony for which he or she  
24 now stands convicted.

25 (4) For the purpose of determining whether a person has two (2) or more previous  
26 felony convictions, two (2) or more convictions of crime for which that person  
27 served concurrent or uninterrupted consecutive terms of imprisonment shall be

1 deemed to be only one (1) conviction, unless one (1) of the convictions was for an  
2 offense committed while that person was imprisoned.

3 (5) A person who is found to be a persistent felony offender in the second degree shall  
4 be sentenced to an indeterminate term of imprisonment pursuant to the sentencing  
5 provisions of KRS 532.060(2) for the next highest degree than the offense for  
6 which convicted. A person who is found to be a persistent felony offender in the  
7 second degree shall not be eligible for probation, shock probation, or conditional  
8 discharge, unless all offenses for which the person stands convicted are Class D  
9 felony offenses which do not involve a violent act against a person, in which case  
10 probation, shock probation, or conditional discharge may be granted. A violent  
11 offender who is found to be a persistent felony offender in the second degree shall  
12 not be eligible for parole except as provided in KRS 439.3401.

13 (6) A person who is found to be a persistent felony offender in the first degree shall be  
14 sentenced to imprisonment as follows:

15 (a) If the offense for which he or she presently stands convicted is a Class A or  
16 Class B felony, or if the person was previously convicted of one (1) or more  
17 sex crimes committed against a minor as defined in KRS 17.500 and presently  
18 stands convicted of a subsequent sex crime, a persistent felony offender in the  
19 first degree shall be sentenced to an indeterminate term of imprisonment, the  
20 maximum of which shall not be less than twenty (20) years nor more than  
21 fifty (50) years, or life imprisonment, or life imprisonment without parole for  
22 twenty-five (25) years for a sex crime committed against a minor;

23 (b) If the offense for which he or she presently stands convicted is a Class C or  
24 Class D felony, a persistent felony offender in the first degree shall be  
25 sentenced to an indeterminate term of imprisonment, the maximum of which  
26 shall not be less than ten (10) years nor more than twenty (20) years.

27 (7) A person who is found to be a persistent felony offender in the first degree shall not

1 be eligible for probation, shock probation, or conditional discharge, unless all  
2 offenses for which the person stands convicted are Class D felony offenses which  
3 do not involve a violent act against a person or a sex crime as that term is defined in  
4 KRS 17.500, in which case, probation, shock probation, or conditional discharge  
5 may be granted. If the offense the person presently stands convicted of is a Class A,  
6 B, or C felony, the person shall not be eligible for parole until the person has served  
7 a minimum term of incarceration of not less than ten (10) years, unless another  
8 sentencing scheme applies. A violent offender who is found to be a persistent  
9 felony offender in the first degree shall not be eligible for parole except as provided  
10 in KRS 439.3401.

11 (8) A conviction, plea of guilty, or Alford plea under KRS 218A.1415 shall not trigger  
12 the application of this section, regardless of the number or type of prior felony  
13 convictions that may have been entered against the defendant. A conviction, plea of  
14 guilty, or Alford plea under KRS 218A.1415 may be used as a prior felony offense  
15 allowing this section to be applied if he or she is subsequently convicted of a  
16 different felony offense.

17 (9) The provisions of this section amended by 1994 Ky. Acts ch. 396, sec. 11, shall be  
18 retroactive.

19 (10) (a) Except as provided in paragraph (b) of this subsection, this section shall not  
20 apply to a person convicted of a criminal offense if the penalty for that offense  
21 was increased from a misdemeanor to a felony, or from a lower felony  
22 classification to a higher felony classification, because the conviction  
23 constituted a second or subsequent violation of that offense.

24 (b) This subsection shall not prohibit the application of this section to a person  
25 convicted of:

26 1. A felony offense arising out of KRS 189A.010, 189A.090, 506.140,  
27 508.032, 508.140, or 510.015; or

1                   2. Any other felony offense if the penalty was not enhanced to a higher  
2                   level because the Commonwealth elected to prosecute the person as a  
3                   first-time violator of that offense.

4                   **(11) The enhancement of a sentence pursuant to this section shall not alter the felony**  
5                   **classification of the conviction.**