

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. ~~A~~No hearing upon the merits of the application shall not
14 be 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:

9 (a) Dismiss with prejudice any charges which are eligible for expungement under
10 subsection (1) of this section or KRS 431.076 or 431.078 and any charges for
11 *felonies, misdemeanors, violations, or traffic infractions that were dismissed*
12 *or amended in the criminal action;*~~;~~ and~~;~~

13 (b) Upon full payment of the fee in subsection (11) of this section, order
14 expunged all records in the custody of the court and any records in the
15 custody of any other agency or official, including law enforcement records, if
16 the court finds that:

17 1.~~(a)~~ The person had not in the five (5) years prior to the filing of the
18 application to have the judgment vacated been convicted of a felony or a
19 misdemeanor;

20 2.~~(b)~~ No proceeding concerning a felony or misdemeanor is pending ~~for~~
21 ~~being instituted~~ against the person; and

22 3.~~(c)~~ For an application pursuant to subsection (1)(d) of this section, the
23 person has been rehabilitated and poses no significant threat of
24 recidivism.

25 (6) If the court has received a response from the office of the Commonwealth's attorney
26 or county attorney that prosecuted the case stating no objection to the application to
27 have the judgment vacated, or if one hundred twenty (120) days have elapsed since

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

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

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

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

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

26 (11) (a) Upon the issuance of an order vacating and expunging a conviction pursuant
27 to this section, the applicant shall be charged an expungement fee of two

1 hundred fifty dollars (\$250), which may be payable by an installment plan in
2 accordance with KRS 534.020.

3 (b) When the order is issued, the court shall set a date, no sooner than eighteen
4 (18) months after the date of the order, by which the defendant must comply
5 with the installment payment plan. The applicant shall be given notice of the
6 total amount due, the payment frequency, and the date by which all payments
7 must be made. The notice shall state that the expungement cannot be
8 completed until full payment is received, and that if the applicant has not
9 completed the installment payment plan by the scheduled date, he or she shall
10 appear on that date to show good cause as to why he or she is unable to satisfy
11 the obligations. Notwithstanding ~~provisions of~~ KRS 534.020 to the contrary,
12 ~~an~~no applicant shall not be ordered to jail for failure to complete an
13 installment plan ordered pursuant to this section.

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

16 (12) This section shall be retroactive.

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

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

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

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

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

1 the right at the time of adjudication.

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

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

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

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

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

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

22 (d) The offense is not one subject to enhancement for a second or subsequent
23 offense or, if the law specifies a period for enhancement for a second or
24 subsequent offense, the time for such an enhancement has expired.

25 (5) For a petition brought under subsection (1)(b) of this section, the court may order
26 expunged all records in the custody of the court and any records in the custody of
27 any other agency or official, including law enforcement records, if at the hearing

1 the court finds that:

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

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

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

7 (d) The offense is not one subject to enhancement for a second or subsequent
8 offense or, if the law specifies a period for enhancement for a second or
9 subsequent offense, the time for such an enhancement has expired.

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

18 (7) The filing fee for a petition under this section shall be one hundred dollars (\$100).
19 The first fifty dollars (\$50) of each fee collected pursuant to this subsection shall be
20 deposited into a trust and agency account for deputy clerks and shall not be
21 refundable.

22 (8) Copies of the order shall be sent to each agency or official named therein.

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

26 (10) This section shall be ~~deemed to be~~ retroactive~~, and any person who has been~~
27 ~~convicted of a misdemeanor prior to July 14, 1992, may petition the court in which~~

1 ~~he was convicted, or if he was convicted prior to the inception of the District Court~~
2 ~~to the District Court in the county where he now resides, for expungement of the~~
3 ~~record of one (1) misdemeanor offense or violation or a series of misdemeanor~~
4 ~~offenses or violations arising from a single incident, provided that the offense was~~
5 ~~not one specified in subsection (4) and that the offense was not the precursor~~
6 ~~offense of a felony offense for which he was subsequently convicted. This section~~
7 ~~shall apply only to offenses against the Commonwealth of Kentucky].~~

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

9 (12) Any person denied an expungement prior to June 25, 2013, due to the presence of a
10 traffic infraction on his or her record may file a new petition for expungement of
11 the previously petitioned offenses, which the court shall hear and decide under the
12 terms of this section. ~~[No]~~ Court costs or other fees, from the court or any other
13 agency, shall **not** be required of a person filing a new petition under this subsection.

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

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

26 (2) A persistent felony offender in the second degree is a person who is more than
27 twenty-one (21) years of age and who stands convicted of a felony after having

1 been convicted of one (1) previous felony. As used in this provision, a previous
2 felony conviction is a conviction of a felony in this state or conviction of a crime in
3 any other jurisdiction provided:

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

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

8 (c) That the offender:

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

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

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

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

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

27 (3) A persistent felony offender in the first degree is a person who is more than twenty-

1 one (21) years of age and who stands convicted of a felony after having been
2 convicted of two (2) or more felonies, or one (1) or more felony sex crimes against
3 a minor as defined in KRS 17.500, and now stands convicted of any one (1) or more
4 felonies. As used in this provision, a previous felony conviction is a conviction of a
5 felony in this state or conviction of a crime in any other jurisdiction provided:

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

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

10 (c) That the offender:

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

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

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

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

26 5. Had escaped from custody while serving any of the previous felony
27 convictions at the time of commission of the felony for which he or she

1 now stands convicted.

2 (4) For the purpose of determining whether a person has two (2) or more previous
3 felony convictions, two (2) or more convictions of crime for which that person
4 served concurrent or uninterrupted consecutive terms of imprisonment shall be
5 deemed to be only one (1) conviction, unless one (1) of the convictions was for an
6 offense committed while that person was imprisoned.

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

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

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

27 (b) If the offense for which he or she presently stands convicted is a Class C or

1 Class D felony, a persistent felony offender in the first degree shall be
2 sentenced to an indeterminate term of imprisonment, the maximum of which
3 shall not be less than ten (10) years nor more than twenty (20) years.

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

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

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

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

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

3 1. A felony offense arising out of KRS 189A.010, 189A.090, 506.140,
4 508.032, 508.140, or 510.015; or

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

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