

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~~<sup>No</sup> 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.



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~~<sup>no</sup> 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.

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.*