

1 AN ACT relating to victims of human trafficking.

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

3 ➔Section 1. KRS 529.160 is amended to read as follows:

- 4 (1) When a person is charged or convicted under this chapter, or with an offense which
5 is not a violent crime as defined in KRS 17.165, and the person's participation in the
6 offense is determined to be the ~~{direct}~~ result of being a victim of human
7 trafficking, the person may petition~~{make a motion in}~~ the court in which the
8 charges were filed to *vacate the judgment of conviction*, expunge all records of the
9 offense, *or both*.
- 10 (2) (a) *The petition for relief under this section may be filed at any time after the*
11 *final judgment is entered by the court in which the charges were filed. The*
12 *petition shall include a certification of eligibility for expungement as*
13 *required by KRS 431.079.*
- 14 (b) *Any person filing a petition for relief may request to seal the record. The*
15 *clerk shall immediately seal the record which shall remain sealed until the*
16 *court rules upon the request. If the court grants the request to seal the*
17 *record, the petition and any related papers or pleadings shall be filed under*
18 *seal and remain sealed unless opened by a higher court.*
- 19 (3) (a) *Upon the filing of a petition for relief under this section, the Circuit Court*
20 *clerk shall serve a notice of filing upon the office of the Commonwealth's*
21 *attorney or county attorney that prosecuted the case and the county attorney*
22 *of the county where the judgment was entered.*
- 23 (b) *The office of the Commonwealth's attorney or county attorney that*
24 *prosecuted the case shall file a response to the petition for relief within*
25 *twenty-one (21) days after being served with the notice of filing.*
- 26 (c) *If a response is not filed, the court shall deem the petition for relief*
27 *unopposed and may grant the petition without a hearing.*

1 (4) (a) If the court determines that a hearing on the petition for relief is necessary,
2 the court shall set a date for the hearing, which shall be held no later than
3 thirty (30) days after the filing of the response.

4 (b) The hearing shall be closed if the court has sealed the record or upon
5 agreement of the parties. The person who filed the petition for relief may:

6 1. Appear at any hearing held under this subsection telephonically, via
7 video conference, or by other electronic means; or

8 2. Waive his or her right to be present at any hearing held under this
9 subsection if he or she is represented by counsel.

10 (5) (a) Any person filing a petition for relief under this section may submit
11 supporting documents, exhibits, or other evidence.

12 (b) An official determination or documentation shall not be required to find
13 that the person's participation in the offense was a result of being a victim
14 of human trafficking, but documentation from a federal, state, local, or
15 tribal governmental agency indicating that the defendant was a victim at the
16 time of the offense shall create a presumption that the defendant's
17 participation in the offense was a result of being a victim of human
18 trafficking.

19 (6) If the court finds based upon a preponderance of the evidence that the person's
20 participation in the offense is the result of being a victim of human trafficking,
21 the court shall:

22 (a) For a person convicted of the offense, order the judgment vacated;

23 (b) Order the case file to be sealed or remain sealed as ordered under
24 subsection (2)(b) of this section; and

25 (c) Order expunged all records in the custody of the court and any records in
26 the custody of any other agency or official, including law enforcement
27 records. The court shall order the expunging on a form provided by the

1 Administrative Office of the Courts. Every agency with records relating to
2 the arrest, charge, or other matters arising out of the arrest or charge that is
3 ordered to expunge records shall certify to the court within sixty (60) days of
4 the entry of the expungement order that the required expunging action has
5 been completed. All orders enforcing the expungement procedure shall also
6 be expunged.

7 (7) If an expungement is ordered under subsection (6) of this section, an appellate
8 court which issued an opinion in the case shall order the appellate case file to be
9 sealed and direct that the version of the appellate opinion published on the
10 court's website be modified to avoid use of the defendant's name in the case title
11 and body of the opinion.

12 (8) For a person charged with the offense but not convicted, a finding by the court
13 that the person's participation in the offense was a result of being a victim of
14 human trafficking shall deem the charges as dismissed with prejudice.

15 (9) (a) Upon entry of an order vacating a felony conviction, the person's ability to
16 vote shall be restored and the person may register to vote if the person is not
17 prohibited from voting for any other reason.

18 (b) 1. Upon entry of an order to expunge the records, the proceedings in the
19 case shall be deemed never to have occurred. The court and other
20 agencies shall delete or remove the records from their computer
21 systems so that any official state-performed background check will
22 indicate that the records do not exist. The court and other agencies
23 shall reply to any inquiry that no record exists on the matter. The
24 person whose record is expunged shall not be required to disclose the
25 fact of the record or any matter relating thereto on an application for
26 employment, credit, or other type of application.

27 2. Inspection of the records included in the order may thereafter be

1 permitted by the court only upon petition by the person who is the
2 subject of the records and only to those persons named in the petition.

3 (10) This section shall be retroactive~~[The motion shall be filed no sooner than sixty (60)~~
4 ~~days following the date the final judgment was entered by the court in which the~~
5 ~~charges were filed.~~

6 ~~(3) (a) A motion filed under this section, any hearing conducted on the motion, and~~
7 ~~any relief granted are governed by KRS 431.076, 431.078, and 431.079 unless~~
8 ~~otherwise provided in this section.~~

9 ~~(b) For the purposes of expungement under KRS 431.076, a finding by the court~~
10 ~~that the person's participation in the offense was a direct result of being a~~
11 ~~victim of human trafficking shall deem the charges as dismissed with~~
12 ~~prejudice.~~

13 ~~(c) No official determination or documentation is required to find that the~~
14 ~~person's participation in the offense was a direct result of being a victim of~~
15 ~~human trafficking, but documentation from a federal, state, local, or tribal~~
16 ~~governmental agency indicating that the defendant was a victim at the time of~~
17 ~~the offense shall create a presumption that the defendant's participation in the~~
18 ~~offense was a direct result of being a victim].~~