

**COMMONWEALTH OF KENTUCKY STATE FISCAL NOTE STATEMENT
LEGISLATIVE RESEARCH COMMISSION
2017 REGULAR SESSION**

MEASURE

2017 BR NUMBER 0243

SENATE BILL NUMBER 37

RESOLUTION NUMBER _____

AMENDMENT NUMBER _____

SUBJECT/TITLE An ACT relating to expungement.

SPONSOR Senator G. Neal

NOTE SUMMARY

FISCAL ANALYSIS: IMPACT NO IMPACT INDETERMINABLE IMPACT

LEVEL(S) OF IMPACT: STATE LOCAL FEDERAL

BUDGET UNIT(S) IMPACT: **General Funds, Administrative Office of the Courts, Kentucky State Police, Kentucky Department of Library and Archives**

FUND(S) IMPACT: GENERAL ROAD FEDERAL RESTRICTED AGENCY OTHER

FISCAL SUMMARY

FISCAL ESTIMATES	2016-2017	2017-2018	ANNUAL IMPACT AT FULL IMPLEMENTATION
REVENUES	Indeterminable	Indeterminable	Indeterminable
EXPENDITURES	Indeterminable	Indeterminable	Indeterminable
NET EFFECT	Indeterminable	Indeterminable	Indeterminable

() indicates a decrease/negative

MEASURE'S PURPOSE: This legislation will lower the overall costs of filing fees for an application to have judgement vacated and records expunged for a Class D felony conviction. In addition to a lower fee, this legislation also specifies the usage of application filing fees for Class D felony, misdemeanor, violation, and traffic infraction expungement applications. Application filing fees under this proposed legislation would now have the option to be refunded, waived (in part or in whole), or not required under the new provisions of this legislation.

In addition, SB 37 reinstates previous statutory language requiring that the \$100 fee related to misdemeanor expungements be split evenly with Administrative Office of the Courts (AOC) and the General Fund.

PROVISIONS/MECHANICS: Section 1 amends KRS 431.073 to decrease the filing fee for an application to have judgement vacated and records expunged for a qualifying Class D felony from \$500 to \$200. While the first \$50 of each application fee will be nonrefundable, this section is amended to have the remainder of the application filing fee deposited into the General Fund, and that portion is to be refunded in the event that the application is denied. The fee may be

waived, in part or in whole, if the court determines the applicant to be indigent, or waived entirely if relating to an offense for which a full pardon has been granted.

Section 2 amends KRS 431.078 to clarify the procedure for the remainder of filing fees for application to have judgement vacated and records expunged for a qualifying misdemeanor, violation, or traffic infraction. While the first \$50 of each application fee will be nonrefundable, this section is amended to have the remainder of the application fee deposited into the General Fund, and refunded in the event that the application is denied. It also provides the court the ability to waive the application fee if applicant is determined to be indigent.

FISCAL EXPLANATION: SB 37 reduces the filing fee for an application to vacate and expunge an existing Class D felony from \$500 to \$200 while maintaining that \$50 be kept by AOC. SB 37 creates the provision that the remaining \$150 for each filing fee be sent to the General Fund. Other provisions include the potential to refund the filing fee if an application is denied; waived, in part or in whole, if the court determines the applicant to be indigent; waived entirely if relating to an offense for which a full pardon has been granted.

While the waiving of fees for either classification, felony or misdemeanor, will lower state funds in all forms, the refund of fees would directly impact the General Fund as the AOC portion (\$50) of each application fee is nonrefundable.

Based on data received from AOC, 9,815 expungement petition applications, as related to unique cases, were processed from January 1, 2015 through December 31, 2016. Of those expungement applications, 694 were related to Class D felony convictions received from July 15, 2016 through December 31, 2016. As of December 31, 2016 a total of 36 Class D felony conviction applications, as related to unique cases and included one pardon-related petition, had been denied statewide. Based on the provisions of SB 37 and assuming that there are no data trend changes, it is likely that, at minimum, the state can expect to refund no less than \$5,250 annually (35 Class D felony applications denied multiplied by \$150 refundable portion of fee) on Class D felony conviction expungement denials. In relation to all other expungements denied, it is uncertain of the refunds that will be required to be processed under the provisions of SB 37. Petitions for expungement in relation to felony and misdemeanor charges not resulting in an indictment, acquittal, dismissal, misdemeanor conviction, traffic violation, and infraction that existed prior to the inception of HB 40 of the 2016 Regular Session cannot be analyzed based on the data provided by AOC. The state can expect there to be a direct decrease to the General Fund as applications are denied and refunds are processed however, based on information from AOC, no actual estimate can be determined at this time.

Taking into account the fees no longer required, pursuant to this legislation, for expungements as related to full pardons, the state can expect to see a direct decrease in state revenues. Based on data from AOC, Class D felony expungements as related to full pardons totaled 30 applications received for unique cases from July 15, 2016 through December 31, 2016. Based on this proposed legislation it is estimated that, at minimum, the state can expect to see no less than a \$15,000 decrease in all state revenue streams for this type of expungement request under this proposed legislation.

When annualizing and averaging the current data it is reasonable to expect that the state can anticipate 7-8% of the received expungement petition applications, as related to unique cases, be denied and refunds be processed under this legislation. This analysis only reflects the conviction data for the eligible offenses and their associated penalties as they currently stand. The ultimate fiscal impact of this legislation may take many forms. The following scenarios are potential directions that the legislation may take and should not be considered the only potential options.

Scenario 1: Loss of Direct State Revenue as a Result of Lowering the Application Fee

If the fee is lowered from \$500 to \$200, it may be true that the state will potentially see a decrease in overall revenues. This scenario, however, assumes that of the total number of potential applicants, the same number of applicants will apply for expungement when the fee is \$500 as there would be if the fee were lowered to \$200. While this is a plausible perspective to hold, the fact remains that as the fee increases, fewer and fewer potential applicants will remain. To explain, much of the discussion surrounding the enactment of felony expungement legislation in the 2016 Regular Session centered on the potential economic gains that could be had by increasing the total number of Kentuckians in the workforce who, if granted an expungement, could then more easily obtain gainful employment. It is plausible to postulate, then, that many Kentuckians who have a Class D felony currently struggle with securing employment that provides a wage that would permit these individuals to pay the \$500 fee and apply for expungement.

Scenario 2: Increase in Direct State Revenue as a Result of Lowering the Application Fee

The opposite conclusion could be drawn that lowering the fee to \$200 will actually result in additional state and agency revenue. For example, if there are a total of 50 eligible offenders interested in having their records expunged, yet the \$500 fee results in only 15 applicants, then total revenues will be \$7,500. If the fee were lowered to \$200, the same group of 50 expungement hopefuls may yield a total of 40 actual applicants, or \$8,000. Essentially, lowering the fee to \$200 may have the potential to directly and positively impact state revenues in the form of a larger range of potential applicants than would have occurred had the fee remained at \$500. Much like the opposite scenario discussed above, this scenario assumes that more applications will be received by lowering the fee to \$200.

It is important to note that decreasing application fees may result in an increase in applications and state agencies will have increased operating costs to process these applications. Agencies like AOC, KSP (Kentucky State Police), and KDLA (Kentucky Department of Library and Archives) all currently bear the costs of expunging the actual records. Each agency requires personnel, operating costs, and recurring annual costs to keep up with current expungement requests.

DATA SOURCE(S): LRC Staff, AOC, KSP, and KDLA

PREPARER: Zach Ireland and Savannah Wiley NOTE NUMBER: 20 REVIEW: JRS DATE: 2/2/2017