

**Local Government Mandate Statement
Kentucky Legislative Research Commission
2022 Regular Session**

REVISED 3/18/2022

Part I: Measure Information

Bill Request #: 985

Bill #: SB 33 HCS 1

Document ID #: 8152

Bill Subject/Title: AN ACT relating to expungement.

Sponsor: Senator Jimmy Higdon

Unit of Government: X City X County X Urban-County
Unified Local
X Charter County X Consolidated Local X Government

Office(s) Impacted: County attorneys; all local prosecutorial and law enforcement agencies holding records of charges subject to judgement vacation, or enhancement without a specified time period

Requirement: X Mandatory ___ Optional

Effect on Powers & Duties: X Modifies Existing X Adds New ___ Eliminates Existing

Part II: Bill Provisions and the Estimated Fiscal Impact Relating to Local Government

Under current law (KRS 431.073), an individual may petition a court to vacate a judgement on certain Class D felonies five years after completion of the petitioner’s sentence or probation and parole. **Section 1** removes the requirement to wait five years after the completion of the petitioner’s sentence or probation and parole. **Section 1** also removes the \$250 expungement fee that is deposited in the expungement fund established under KRS 431.0795.

KRS 431.076 allows an individual to petition a court to vacate a judgement on certain felonies and misdemeanors provided a period of three years for felonies and one year for misdemeanors has lapsed after completion of the petitioner’s sentence or probation and parole. **Section 2** removes the requirement to wait one or three years after the completion of the petitioner’s sentence or probation and parole.

Under current law (KRS 431.078), a person convicted of a misdemeanor, a violation, or a series of misdemeanors or violations arising from a single incident, may petition the court in which that person was convicted for expungement of his or her misdemeanor or violation record, as long as the offense was not a sex offense or an offense committed against a child. The current law, however, does not provide for expungement if the offense may be enhanced with additional penalties and the potential for enhancement does not expire.

Section 3 amends the statute to permit a person convicted of an offense that is subject to enhancement on an indefinite basis to petition the court for expungement, provided a period of at least five years has lapsed since the date of the offense, unless the offense is subject to enhancement to a felony. If the offense is subject to enhancement to a felony and the individual is not convicted of any misdemeanor or felony in the ten year period prior to the filing of the petition, an individual may petition the court for expungement provided a period of at least ten years has lapsed since the date of offense.

The fiscal impact of SB 33 HCS 1 on local government expenditures is indeterminate due to the impossibility of predicting a percentage of those who may have records expunged; however, it is expected to be minimal. Local jails transfer custody of records upon release of inmates and will be unaffected. Local law enforcement agencies may realize a minimal negative impact as manual expungements take less than 30 minutes, and computerized records take not more than five minutes to delete.

The fiscal impact of SB 33 HCS 1 on local government revenues is expected to be minimal. The removal of expungement fees and repeal of the expungement fund eliminates a revenue source for offices of Commonwealth's attorneys. The expungement fund distributes funds to the Department for Libraries and Archives, Department of Kentucky State Police, Administrative Office of the Courts, and the offices of the Commonwealth's attorneys. Forty percent of the revenue in the fund is shared equally among the offices of the Commonwealth's attorneys. The expungement fund had a total revenue of \$176,000 in FY 2021. Only 40% of the revenue is distributed to local governments, indicating a loss of \$600 in annual revenue for each county if the revenue were to remain constant.

Part III: Differences to Local Government Mandate Statement from Prior Versions

Part II, above, pertains to **SB 33**, as amended by **HCS 1, SFA 1, and SFA 2**.

SFA 1 amended the bill to increase the period of time an individual must wait to petition the court for expungement from five years to ten years if the offense is subject to enhancement to a felony.

SFA 2 amended the bill to require an applicant's criminal record to be void of convictions for any misdemeanor or felony in the ten years prior to filing the petition if the offense is subject to enhancement to a felony.

HCS 1 retains the original provisions of **SB 33 GA**, and creates three new sections (1,2, and 4). KRS 431.073 allows an individual to petition a court to vacate a judgement on certain Class D felonies five years after completion of the petitioner’s sentence or probation and parole. **Section 1** removes the requirement to wait five years after the completion of the petitioner’s sentence or probation and parole. Section 1 also removes the \$250 expungement fee that is deposited in the expungement fund established under KRS 431.0795.

KRS 431.076 allows an individual to petition a court to vacate a judgement on certain felonies and misdemeanors provided a period of three years for felonies and one year for misdemeanors have lapsed after completion of the petitioner’s sentence or probation and parole. **Section 2** removes the requirement to wait one or three years after the completion of the petitioner’s sentence or probation and parole.

Section 4 repeals the expungement fund established by KRS 431.0795.

The fiscal impact on expenditures remains the same as the mandate for the bill as introduced, but SB 33 HCS 1 created a new impact on revenues with the removal of expungement fees and repeal of the expungement fund.

Data Source(s): Kentucky Jailers Association; Kentucky Sheriffs Association; Kentucky Association of Chiefs of Police

Preparer: K. Sallee/MS **Reviewer:** KHC **Date:** 3/18/22