

1 AN ACT relating to expungement of criminal records.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) A conviction shall be subject to automatic expungement if:*

6 *(a) The conviction for a misdemeanor, a violation, or a traffic infraction not*
7 *otherwise classified as a misdemeanor or violation, or for a Class D felony*
8 *with a maximum sentence of three (3) years or less;*

9 *(b) The offense was not a sex offense or an offense committed against a child;*

10 *(c) Five (5) years have elapsed since entry of the judgment;*

11 *(d) The sentence, including all financial obligations, has been completed; and*

12 *(e) The person had not, in the most recent five (5) years, been convicted of a*
13 *felony.*

14 *(2) The Administrative Office of the Courts shall, on the first of each month,*
15 *transmit to the Circuit Court clerk in the judicial district where the conviction*
16 *occurred the record of any conviction eligible for automatic expungement under*
17 *subsection (1) of this section.*

18 *(3) Within thirty (30) days of receiving a record under subsection (2) of this section,*
19 *the court in which the conviction occurred shall order expunged all records in*
20 *the custody of the court and any records in the custody of any other agency or*
21 *official, including law enforcement records, and shall transmit copies of the*
22 *order to the Administrative Office of the Courts and to the Department of*
23 *Kentucky State Police, Criminal Identifications and Records Branch.*

24 *(4) Upon the entry of an order to expunge the records, the proceedings in the case*
25 *shall be deemed never to have occurred; the court and other agencies shall cause*
26 *records to be deleted or removed from their computer systems so that the matter*
27 *shall not appear on official state-performed background checks; the court and*

1 the person whose record is expunged may properly reply that no record exists
 2 with respect to the person upon any inquiry in the matter; and the person whose
 3 record is expunged shall not have to disclose the fact of the record or any matter
 4 relating thereto on an application for employment, credit, or other type of
 5 application.

6 (5) Inspection of the records included in the order may thereafter be permitted by the
 7 court only upon petition by the person who is the subject of the records and only
 8 to those persons named in the petition.

9 (6) This section shall be retroactive.

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

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

12 (a) A misdemeanor, a violation, ~~or~~ a traffic infraction not otherwise classified as
 13 a misdemeanor or violation, or a Class D felony with a maximum sentence
 14 of three (3) years or less, which has not been automatically expunged
 15 pursuant to Section 1 of this Act~~[or a series of misdemeanors, violations, or~~
 16 ~~traffic infractions arising from a single incident]; or~~

17 (b) A series of offenses eligible under paragraph (a) of this
 18 subsection~~[misdemeanors, violations, or traffic infractions not arising from a~~
 19 ~~single incident];~~

20 may petition the court in which he or she was convicted for expungement of his or
 21 her~~[misdemeanor or violation]~~ record within that judicial district~~[, including a~~
 22 ~~record of any charges for misdemeanors, violations, or traffic infractions that were~~
 23 ~~dismissed or amended in the criminal action. The person shall be informed of the~~
 24 ~~right at the time of adjudication].~~

25 (2) ~~[Except as provided in KRS 218A.275(8) and 218A.276(8),]~~The petition shall be
 26 filed no sooner than five (5) years after the entry of judgment in the
 27 case~~[completion of the person's sentence or five (5) years after the successful~~

1 completion of the person's probation, whichever occurs later].

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

9 ~~(4) For a petition brought under subsection (1)(a) of this section,]The court shall order~~
10 ~~expunged all records in the custody of the court and any records in the custody of~~
11 ~~any other agency or official, including law enforcement records, if [at the hearing~~
12 ~~]the court finds that:~~

13 ~~**(a) The offense was not a sex offense or an offense committed against a child;**~~

14 ~~**(b) Five (5) years have elapsed since entry of the judgment;**~~

15 ~~**(c) The sentence, including all financial obligations, has been completed; and**~~

16 ~~**(d) [(a) The offense was not a sex offense or an offense committed against a**~~
17 ~~**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 or 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 the time for such an enhancement has expired.**~~

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

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

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

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

6 ~~(d) The offense is not one subject to enhancement for a second or subsequent~~
7 ~~offense or the time for such an enhancement has expired].~~

8 ~~(4)~~~~(6)~~ Upon the entry of an order to expunge the records, the proceedings in the case
9 shall be deemed never to have occurred; the court and other agencies shall cause
10 records to be deleted or removed from their computer systems so that the matter
11 shall not appear on official state-performed background checks; ~~the~~~~persons and~~
12 ~~the~~ court **and the person whose record is expunged** may properly reply that no
13 record exists with respect to the **person**~~persons~~ upon any inquiry in the matter;
14 and the person whose record is expunged shall not have to disclose the fact of the
15 record or any matter relating thereto on an application for employment, credit, or
16 other type of application.

17 ~~(5)~~~~(7)~~ **There shall be no**~~The~~ filing fee for a petition under this section ~~shall be one~~
18 ~~hundred dollars (\$100). The first fifty dollars (\$50) of each fee collected pursuant to~~
19 ~~this subsection shall be deposited into a trust and agency account for deputy clerks~~
20 ~~and shall not be refundable].~~

21 ~~(6)~~~~(8)~~ Copies of the order shall be sent to each agency or official named therein **and**
22 **to the Department of Kentucky State Police, Criminal Identifications and Records**
23 **Branch.**

24 ~~(7)~~~~(9)~~ Inspection of the records included in the order may thereafter be permitted by
25 the court only upon petition by the person who is the subject of the records and only
26 to those persons named in the petition.

27 ~~(8)~~~~(10)~~ This section shall be ~~deemed to be~~ retroactive~~, and any person who has~~

1 ~~been convicted of a misdemeanor prior to July 14, 1992, may petition the court in~~
 2 ~~which he was convicted, or if he was convicted prior to the inception of the District~~
 3 ~~Court to the District Court in the county where he now resides, for expungement of~~
 4 ~~the record of one (1) misdemeanor offense or violation or a series of misdemeanor~~
 5 ~~offenses or violations arising from a single incident, provided that the offense was~~
 6 ~~not one specified in subsection (4) and that the offense was not the precursor~~
 7 ~~offense of a felony offense for which he was subsequently convicted. This section~~
 8 ~~shall apply only to offenses against the Commonwealth of Kentucky.~~

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

10 ~~(12) Any person denied an expungement prior to June 25, 2013, due to the presence of a~~
 11 ~~traffic infraction on his or her record may file a new petition for expungement of the~~
 12 ~~previously petitioned offenses, which the court shall hear and decide under the~~
 13 ~~terms of this section. No court costs or other fees, from the court or any other~~
 14 ~~agency, shall be required of a person filing a new petition under this subsection].~~

15 ➔Section 3. KRS 431.073 is amended to read as follows:

16 (1) Any person who has been:

17 (a) Convicted of a Class D felony violation of KRS 17.175, 186.990, 194A.505,
 18 194B.505, 217.181, 217.207, 217.208, 218A.140, 218A.1415, 218A.1416,
 19 218A.1417, 218A.1418, 218A.1423, 218A.1439, 218A.282, 218A.284,
 20 218A.286, 218A.320, 218A.322, 218A.324, 218A.500, 244.165, 286.11-057,
 21 304.47-025, 324.990, 365.241, 434.155, 434.675, 434.850, 434.872, 511.040,
 22 512.020, 514.030, 514.040, 514.050, 514.060, 514.065, 514.070, 514.080,
 23 514.090, 514.100, 514.110, 514.120, 514.140, 514.150, 514.160, 516.030,
 24 516.060, 516.090, 516.108, 517.120, 518.040, 522.040, 524.100, 525.113,
 25 526.020, 526.030, 528.020, 528.040, 528.050, 530.010, or 530.050;

26 (b) Convicted of a series of Class D felony violations of one (1) or more statutes
 27 enumerated in paragraph (a) of this subsection arising from a single incident;

1 (c) Granted a full pardon; or

2 (d) Convicted of:

3 1. A Class D felony, which:

4 a. Was not a violation of KRS 189A.010, 508.032, or 519.055; an
5 abuse of public office; a sex offense; an offense committed
6 against a child; or an offense with a maximum sentence of three
7 (3) years or less; and

8 b. Did not result in serious bodily injury or death; {or }

9 2. An offense prior to January 1, 1975, which:

10 a. Was punishable by not more than five (5) years' incarceration;{,

11 which }

12 b. Was not an{a violation of KRS 189A.010, 508.032, or 519.055,}
13 abuse of public office, a sex offense, or an offense committed
14 against a child;{,} and

15 c. Did not result in serious bodily injury or death; or {of }

16 3. A series of felony offenses eligible under this paragraph;

17 may file with the court in which he or she was convicted an application to have the
18 judgment vacated. The application shall be filed as a motion in the original criminal
19 case. The person shall be informed of the right at the time of adjudication.

20 (2) (a) A verified application to have the judgment vacated under this section shall be
21 filed no sooner than five (5) years after the completion of the person's
22 sentence, or five (5) years after the successful completion of the person's
23 probation or parole, whichever occurs later.

24 (b) Upon the payment of the filing fee and the filing of the application, the Circuit
25 Court clerk shall serve a notice of filing upon the office of the
26 Commonwealth's attorney or county attorney that prosecuted the case and the
27 county attorney of the county where the judgment was entered. The office of

1 the Commonwealth's attorney or county attorney that prosecuted the case shall
2 file a response within sixty (60) days after being served with the notice of
3 filing. That time period may be extended for good cause, but the hearing on
4 the application to vacate the judgment shall occur no later than one hundred
5 twenty (120) days following the filing of the application. The inability to
6 determine the location of the crime victim shall constitute good cause for an
7 extension of time. No hearing upon the merits of the application shall be
8 scheduled until the Commonwealth's response has been filed, or if no
9 response is received, no later than one hundred twenty (120) days after the
10 filing of the application.

11 (c) In any case in which the Commonwealth objects that the application is grossly
12 incomplete, the court shall order the person or agency originating the
13 application to supplement the application.

14 (3) Upon the filing of the Commonwealth's response to an application, or if no response
15 is received, no later than one hundred twenty (120) days after the filing of the
16 application, the court shall set a date for a hearing and the Circuit Court clerk shall
17 notify the office of the Commonwealth's attorney or county attorney that prosecuted
18 the case. The office of the Commonwealth's attorney or county attorney that
19 prosecuted the case shall notify the victim of the crime, if there was an identified
20 victim. The Commonwealth's attorney or county attorney shall be authorized to
21 obtain without payment of any fee information from the Transportation Cabinet
22 regarding the crime victim's address on file regarding any vehicle operator's license
23 issued to that person.

24 (4) (a) In an application pursuant to subsection (1)(d) of this section, upon the filing
25 of the Commonwealth's response objecting to the vacating of a judgment and
26 expungement of a record, the court shall schedule a hearing within one
27 hundred twenty (120) days of the Commonwealth's response. The prosecutor

1 shall specify in the objection the reasons for believing a denial of the
2 application is justified. At the hearing at which the applicant or his or her
3 attorney must be present, the applicant must prove by clear and convincing
4 evidence that:

- 5 1. Vacating the judgment and expunging the record is consistent with the
6 welfare and safety of the public;
- 7 2. The action is supported by his or her behavior since the conviction or
8 convictions, as evidenced that he or she has been active in rehabilitative
9 activities in prison and is living a law-abiding life since release;
- 10 3. The vacation and expungement is warranted by the interests of justice;
11 and
- 12 4. Any other matter deemed appropriate or necessary by the court to make
13 a determination regarding the petition for expungement is met.

14 (b) At the hearing, the applicant may testify as to the specific adverse
15 consequences he or she may be subject to if the application is denied. The
16 court may hear testimony of witnesses and any other matter the court deems
17 proper and relevant to its determination regarding the application. The
18 Commonwealth may present proof of any extraordinary circumstances that
19 exist to deny the application. A victim of any offense listed in the application
20 shall have an opportunity to be heard at any hearing held under this section.

21 (c) If the court determines that circumstances warrant vacation and expungement
22 and that the harm otherwise resulting to the applicant clearly outweighs the
23 public interest in the criminal history record information being publicly
24 available, then the original conviction or convictions shall be vacated and the
25 records shall be expunged. The order of expungement shall not preclude a
26 prosecutor's office from retaining a nonpublic record for law enforcement
27 purposes only.

- 1 (5) The court may order the judgment vacated, and if the judgment is vacated the court
2 shall dismiss with prejudice any charges which are eligible for expungement under
3 subsection (1) of this section or KRS 431.076 or 431.078, and, upon full payment of
4 the fee in subsection (11) of this section, order expunged all records in the custody
5 of the court and any records in the custody of any other agency or official, including
6 law enforcement records, if the court finds that:
- 7 (a) The person had not, after June 27, 2019, had a felony conviction vacated and
8 the record expunged pursuant to this section;
- 9 (b) The person had not in the five (5) years prior to the filing of the application to
10 have the judgment vacated been convicted of a felony or a misdemeanor;
- 11 (c) No proceeding concerning a felony or misdemeanor is pending or being
12 instituted against the person; and
- 13 (d) For an application pursuant to subsection (1)(d) of this section, the person has
14 been rehabilitated and poses no significant threat of recidivism.
- 15 (6) If the court has received a response from the office of the Commonwealth's attorney
16 or county attorney that prosecuted the case stating no objection to the application to
17 have the judgment vacated, or if one hundred twenty (120) days have elapsed since
18 the filing of the application and no response has been received from the victim or
19 the office of the Commonwealth's attorney or county attorney that prosecuted the
20 case, the court may, without a hearing, vacate the judgment in the manner
21 established in subsection (5) of this section.
- 22 (7) Upon entry of an order vacating and expunging a conviction, the original conviction
23 shall be vacated and, upon full payment of the fee in subsection (11) of this section,
24 the record shall be expunged. The court and other agencies shall cause records to be
25 deleted or removed from their computer systems so that the matter shall not appear
26 on official state-performed background checks. The court and other agencies shall
27 reply to any inquiry that no record exists on the matter. The person whose record is

1 expunged shall not have to disclose the fact of the record or any matter relating
2 thereto on an application for employment, credit, or other type of application. If the
3 person is not prohibited from voting for any other reason, the person's ability to vote
4 shall be restored and the person may register to vote.

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

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

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

16 (11) (a) Upon the issuance of an order vacating and expunging a conviction pursuant
17 to this section, the applicant shall be charged an expungement fee of two
18 hundred fifty dollars (\$250), which may be payable by an installment plan in
19 accordance with KRS 534.020.

20 (b) When the order is issued, the court shall set a date, no sooner than eighteen
21 (18) months after the date of the order, by which the defendant must comply
22 with the installment payment plan. The applicant shall be given notice of the
23 total amount due, the payment frequency, and the date by which all payments
24 must be made. The notice shall state that the expungement cannot be
25 completed until full payment is received, and that if the applicant has not
26 completed the installment payment plan by the scheduled date, he or she shall
27 appear on that date to show good cause as to why he or she is unable to satisfy

1 the obligations. Notwithstanding provisions of KRS 534.020 to the contrary,
2 no applicant shall be ordered to jail for failure to complete an installment plan
3 ordered pursuant to this section.

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

6 (12) This section shall be retroactive.