

1 AN ACT relating to expungement.

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 a series of 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 one (1) year~~five (5) years~~ after the completion of the

1 person's sentence, or one (1) year~~[five (5) years]~~ after the successful  
2 completion of the person's 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 shall  
8 file a response within thirty (30)~~[sixty (60)]~~ days after being served with the  
9 notice of filing. That time period may be extended for good cause, but the  
10 hearing on the application to vacate the judgment shall occur no later than  
11 sixty (60)~~[one hundred twenty (120)]~~ days following the filing of the  
12 application. The inability to determine the location of the crime victim shall  
13 constitute good cause for an extension of time. No hearing upon the merits of  
14 the application shall be scheduled until the Commonwealth's response has  
15 been filed, or if no response is received, no later than sixty (60)~~[one hundred  
16 twenty (120)]~~ days after the 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 response  
21 is received, no later than sixty (60)~~[one hundred twenty (120)]~~ days after the filing  
22 of 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.

3       (4)   (a)   In an application pursuant to subsection (1)(d) of this section, upon the filing  
4           of the Commonwealth's response objecting to the vacating of a judgment and  
5           expungement of a record, the court shall schedule a hearing within sixty  
6           ~~(60)[one hundred twenty (120)]~~ days of the Commonwealth's response. The  
7           prosecutor shall specify in the objection the reasons for believing a denial of  
8           the application is justified. At the hearing at which the applicant or his or her  
9           attorney must be present, the applicant must prove by clear and convincing  
10          evidence that:

- 11           1.    Vacating the judgment and expunging the record is consistent with the  
12           welfare and safety of the public;
- 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 dismiss with prejudice any charges which are eligible for expungement under  
9 subsection (1) of this section or KRS 431.076 or 431.078, and, upon full payment of  
10 the fee in subsection (11) of this section, unless the person seeking the  
11 expungement is exempt from the fee, order expunged all records in the custody of  
12 the court and any records in the custody of any other agency or official, including  
13 law enforcement records, if the court finds that:

14 (a) The person had not, after June 27, 2019, had a felony conviction vacated and  
15 the record expunged pursuant to this section;

16 (b) The person had not in the one (1) year~~[five (5) years]~~ prior to the filing of the  
17 application to have the judgment vacated been convicted of a felony or a  
18 misdemeanor;

19 (c) No proceeding concerning a felony or misdemeanor is pending or being  
20 instituted against the person; and

21 (d) For an application pursuant to subsection (1)(d) of this section, the person has  
22 been rehabilitated and poses no significant threat of recidivism.

23 (6) If the court has received a response from the office of the Commonwealth's attorney  
24 or county attorney that prosecuted the case stating no objection to the application to  
25 have the judgment vacated, or if sixty (60)~~[one hundred twenty (120)]~~ days have  
26 elapsed since the filing of the application and no response has been received from  
27 the victim or the office of the Commonwealth's attorney or county attorney that

1 prosecuted the case, the court may, without a hearing, vacate the judgment in the  
2 manner established in subsection (5) of this section.

3 (7) Upon entry of an order vacating and expunging a conviction, the original conviction  
4 shall be vacated and, upon full payment of the fee in subsection (11) of this section,  
5 the record shall be expunged. The court and other agencies shall cause records to be  
6 deleted or removed from their computer systems so that the matter shall not appear  
7 on official state-performed background checks. The court and other agencies shall  
8 reply to any inquiry that no record exists on the matter. The person whose record is  
9 expunged shall not have to disclose the fact of the record or any matter relating  
10 thereto on an application for employment, credit, or other type of application. If the  
11 person is not prohibited from voting for any other reason, the person's ability to vote  
12 shall be restored and the person may register to vote.

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

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

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

24 (11) (a) **Except as provided in paragraph (d) of this subsection,** upon the issuance of  
25 an order vacating and expunging a conviction pursuant to this section, the  
26 applicant shall be charged an expungement fee of two hundred fifty dollars  
27 (\$250), which may be payable by an installment plan in accordance with KRS

1 534.020.

2 (b) When the order is issued, the court shall set a date, no sooner than eighteen  
3 (18) months after the date of the order, by which the defendant must comply  
4 with the installment payment plan. The applicant shall be given notice of the  
5 total amount due, the payment frequency, and the date by which all payments  
6 must be made. The notice shall state that the expungement cannot be  
7 completed until full payment is received, and that if the applicant has not  
8 completed the installment payment plan by the scheduled date, he or she shall  
9 appear on that date to show good cause as to why he or she is unable to satisfy  
10 the obligations. Notwithstanding provisions of KRS 534.020 to the contrary,  
11 no applicant shall be ordered to jail for failure to complete an installment plan  
12 ordered pursuant to this section.

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

15 (d) A person who is a needy person, as determined under KRS 31.120, at the  
16 time of filing the expungement petition shall not be charged the  
17 expungement fee under paragraph (a) of this subsection.

18 (12) This section shall be retroactive.

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

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

21 (a) A misdemeanor, a violation, or a traffic infraction not otherwise classified as a  
22 misdemeanor or violation, or a series of misdemeanors, violations, or traffic  
23 infractions arising from a single incident; or

24 (b) A series of misdemeanors, violations, or traffic infractions not arising from a  
25 single incident;

26 may petition the court in which he was convicted for expungement of his  
27 misdemeanor or violation record within that judicial district, including a record of

1 any charges for misdemeanors, violations, or traffic infractions that were dismissed  
2 or amended in the criminal action. The person shall be informed of the right at the  
3 time of adjudication.

4 (2) Except as provided in KRS 218A.275(8) and 218A.276(8), the petition shall be  
5 filed no sooner than one (1) year~~[five (5) years]~~ after the completion of the person's  
6 sentence or one (1) year~~[five (5) years]~~ after the successful completion of the  
7 person's probation, whichever occurs later.

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

15 (4) For a petition brought under subsection (1)(a) of this section, the court shall order  
16 expunged all records in the custody of the court and any records in the custody of  
17 any other agency or official, including law enforcement records, if at the hearing the  
18 court finds that:

- 19 (a) The offense was not a sex offense or an offense committed against a child;  
20 (b) The person had not in the one (1) year~~[five (5) years]~~ prior to the filing of the  
21 petition for expungement been convicted of a felony or a misdemeanor;  
22 (c) No proceeding concerning a felony or misdemeanor is pending or being  
23 instituted against the person; and  
24 (d) The offense is not one subject to enhancement for a second or subsequent  
25 offense or the time for such an enhancement has expired.

26 (5) For a petition brought under subsection (1)(b) of this section, the court may order  
27 expunged all records in the custody of the court and any records in the custody of

1 any other agency or official, including law enforcement records, if at the hearing the  
2 court finds that:

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

4 (b) The person had not in the one (1) year~~[five (5) years]~~ prior to the filing of the  
5 petition for expungement been convicted of a felony or a misdemeanor;

6 (c) No proceeding concerning a felony or misdemeanor is pending or being  
7 instituted against the person; and

8 (d) The offense is not one subject to enhancement for a second or subsequent  
9 offense or 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 the  
11 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 be required of a person filing a new petition under this subsection.